

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7648

In The
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B

In the Matter of

WEIS SECURITIES, INC.

Debtor.

P/S

STOCK CLEARING CORPORATION,

Plaintiff-Appellant

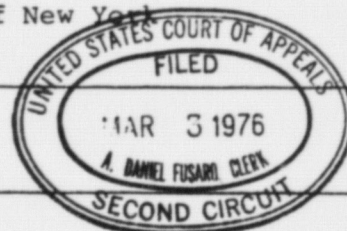
-against-

WEIS SECURITIES, INC. and EDWARD S. REDINGTON,
as Trustee of Weis Securities, Inc.,

Defendants-Appellees.

Appeal From the District Court of the United States
For the Southern District of New York

JOINT APPENDIX



MILBANK, TWEED, HADLEY & McCLOY
Attorneys for Plaintiff-Appellant
Stock Clearing Corporation
1 Chase Manhattan Plaza
New York, New York 10005
(212) 422-2660

HUGHES HUBBARD & REED
Attorneys for Defendants-Appellees
Weis Securities, Inc. and Edward
S. Redington, as Trustee of Weis
Securities, Inc.
1 Wall Street
New York, New York 10005
(212) 943-6500

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Relevant Docket Entries from the Courts Below	1
COMPLAINT of Stock Clearing Corporation	5
ANSWER of the Trustee	23
Stipulation of Facts Between Stock Clearing Corporation and the Trustee, dated November 27, 1974	26
Exhibit A to Stipulation	30
Extract of Exhibit B	32
Extract of Exhibit C	37
Exhibit D	62
Exhibit E	68
Exhibit F	71
Excerpts from Depositions	74
Extract from Transcript of January 15, 1975 Hearing before the Bankruptcy Court	155
June 13, 1975 Opinion of the Bankruptcy Court (Babitt, J.)	158
Extract from Transcript of September 5, 1975 Appellate Argument Before the District Court ...	170
October 28, 1975 Opinion of the District Court (Wyatt, J.)	173

District Court Docket Entries
73 Civ. 2332 (MG)

<u>Date</u>	<u>Proceedings</u>
5/24/73	Filed application of Securities Investor Protection Corp.
5/30/73	Filed Order. Ordered that the customers of Weis Securities, Inc. are in need of the protection of the Securities Investor Protection Act of 1970; further ordered that Edward S. Redington is appointed as trustee for the liquidation of the business of Weis Securities, Inc. as indicated. Trustee shall file a fidelity bond in the amount of \$100,000; further ordered that all creditors of dft. Weis Securities, Inc. and all other persons, firms, etc. are hereby stayed, enjoined and restrained as indicated, etc. Consented to. Gurfein, J. (M/N)
5/31/73	Filed order signed by Murray Gurfein, re referring proceeding to Referee Babitt.

Bankruptcy Court Docket Entries
73 Civ. 2332 (RB)

<u>Date</u>	<u>Proceedings</u>
6/18/73	Filed affidavit of service by attorneys Milbank, Tweed, Hadley & McCloy, re OSC returnable on June 19, 1973 at 9:30 A.M. (directing Trustee to deliver acctg.)
6/28/73	Adj. OSC for trustee prepare and deliver accounting held and adj. to 7/3/73 at 9:00 A.M. Reclamation [sic] motion (Charter) held and closed. (See Referee's memo endorsed . . . Motion granted on consent of trustee. Submit order.) OSC to restrain sale held and closed. (See Referee's memo endorsed . . . Motion denied and stay vacated for reasons of record. So ordered.)
7/3/73	Referee signed stipulation between trustee and atty. for Stock Clearing Corporation, claimant, re authorizing trustee to deposit escrow fund in account with a New York bank, etc.
6/12/74	Filed S/C, re: for an order directing trustee to t/o to escrow funds to Stock Clearing Corp., etc, Ret. 7/16/74 at 1:00.
7/9/74	Filed answer of Trustee, dated July 8, 1974, re complaint of Stock Clearing Corporation (SCC) dated 5/20/74.
7/15/74	Stipulation signed between Trustee and Stock Clearing Corporation (SCC) adjourned hearing scheduled for 7/16/74 to 7/25/74 at 1:00 P.M.

Bankruptcy Court Docket Entries

<u>Date</u>	<u>Proceedings</u>
12/3/74	Stipulation signed between the attorney for Trustee and attorneys for Stock Clearing Corp. (SCC), re striking Count II of the complaint filed with the Court.
12/19/74	Filed affidavit in opposition by attorney for Trustee re opposition to Stock Clearing Corporation's reclamation claim.
1/13/75	Filed reply memorandum of Stock Clearing Corporation in support of reclamation etc. ret. 1/15/75 at 10:30 A.M.
6/13/75	Filed Judge Babitt's opinion dismissing complaint by Stock Clearing Corporation for reclamation.
6/19/75	Filed Notice of Appeal by attorney for SCC from the order of the Referee (Hon. Roy Babitt) dated 6/13/75 dismissing complaint. Paid \$100 to Clerk of Court. Receipt # 53445.

District Court Docket Entries
73 Civ. 2332 (IBW)

<u>Date</u>	<u>Proceedings</u>
7/22/75	Filed plaintiff appellant Stock Clearing Corp. Notice of Appeal. (Mailed notice ret. 8/15/75) (8/1/75 Mailed 2nd Notice).
8/11/75	Filed Memorandum on appeal of Stock Clearing Corp. in support of Reclamation.
8/25/75	Filed Trustee's Memorandum on appeal in opposition to Stock Clearing Corp.'s reclamation claim.
9/2/75	Filed Reply Memorandum on appeal of Stock Clearing Corp., in support of reclamation.
10/9/75	Filed transcript of proceedings dtd. 9-5-75.
10/28/75	Filed Opinion # 43299. The order of the Bankruptcy Judge Babitt entered on 6/13/75, is affirmed. Wyatt, J. (mailed notice) (Stock Clearing).
11/21/75	Filed Pltff. Appellant Stock Clearing Corp. Notice of Appeal from order of Hon. Inzer B. Wyatt dated 11/28/75 (mailed notice).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SECURITIES INVESTOR PROTECTION CORPORATION, :

Applicant, :

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-against- :

WEIS SECURITIES, INC. :

Defendant. :

COMPLAINT

-----x

73 Civ. 2332

STOCK CLEARING CORPORATION, :

Plaintiff, :

-against- :

WEIS SECURITIES, INC. and EDWARD S. :

REDINGTON, as Trustee of Weis Securities,
Inc., :

Defendants.:

-----x

Stock Clearing Corporation, by its attorneys, Milbank, Tweed, Hadley & McCloy, complaining of the defendants, alleges:

1. Stock Clearing Corporation ("SCC") is a New York corporation which, at all times hereinafter mentioned, provided facilities for the completion of securities transactions among persons contracting for its services (each such person hereinafter being called a "Member").

2. At all times relevant hereto Weis Securities, Inc. ("Weis") was a Member of SCC.

3. On May 24, 1973, the Securities Investor Protection Corporation filed an application with this Court instituting the within proceedings against Weis under the Securities Investor

Complaint

Protection Act and on May 30, 1973 defendant Edward S. Redington, Esq. was formally appointed Weis' Trustee herein (the "Trustee").

Count I

4. On May 24, 1973, SCC delivered to Weis, for cash, certain securities more particularly described in Exhibit A annexed hereto and Weis, in payment therefor, issued to SCC a check in the amount of \$1,135,459.87 representing the net cash purchase price due SCC for said securities after deducting monies owed by SCC to Weis in respect of other securities delivered by Weis to SCC on the same day; a copy of said check is annexed hereto as Exhibit B.

5. Said check for \$1,135,459.87 was deposited for collection by SCC on the day of receipt thereof.

6. On May 25, 1973, the bank upon which said check for \$1,135,459.87 was drawn informed SCC that said check would not be honored by reason of insufficient funds in Weis' account.

7. Under and pursuant to a stipulation, dated July 3, 1973, by and between SCC and the Trustee and approved by this Court (a copy of which is annexed hereto as Exhibit C), the principal sum of \$1,135,459.87 was placed in escrow by the Trustee and SCC was granted the right to reclaim said sum in lieu of reclaiming the securities delivered by it to Weis on May 24, 1973, all upon the terms and provisions of said stipulation which are incorporated herein by reference.

8. No part of said \$1,135,459.87 has been paid to SCC by Weis or the Trustee.

9. By reason of the foregoing, SCC, subject to the terms and provisions of the stipulation annexed hereto as Exhibit C, is entitled to the principal sum of \$1,135,459.87 escrowed by the Trustee as aforesaid, together with such interest as may be earned thereon.

ComplaintCOUNT II

10. SCC repeats and realleges each and every allegation contained in paragraphs "4" through "8" hereof.

11. Upon information and belief, at the time Weis took delivery of said securities from SCC on May 24, 1973, Weis knew that it was not able to pay for same and wilfully and fraudulently took delivery thereof for the purpose of wrongfully converting the same to Weis' own use and benefit or for the use and benefit of its customers.

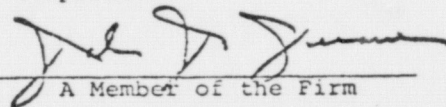
12. By reason of the foregoing, SCC, subject to the terms and provisions of the stipulation annexed hereto as Exhibit C, is entitled to the principal sum of \$1,135,459.87 escrowed by the Trustee as aforesaid, together with such interest as may be earned thereon.

WHEREFORE, SCC prays that the Trustee and Weis, subject to the terms and conditions of the stipulation annexed hereto as Exhibit C, be directed to turn over to SCC the escrowed sum of \$1,135,459.87, together with such interest as may be earned thereon, and further prays for such other and further relief as may be just and proper.

Dated: New York, New York
May 20, 1974

MILBANK, TWEED, HADLEY & McCLOY
Attorneys for Stock Clearing
Corporation

By


A Member of the Firm

1 Chase Manhattan Plaza
New York, New York 10005
212-422-2660

EXHIBIT A

SECURITIES DELIVERED BY STOCK CLEARING CORPORATION
TO WEIS SECURITIES, INC. ON MAY 24, 1973

	<u>Description:</u>	<u>Price:</u>
1.	1 Wean United Inc. Bond	\$ 461.00
2.	200 shares Elgin National Industries Inc.	800.00
3.	20 Memorex Bonds	2,951.67
4.	100 shares Johns Manville Corporation	2,100.00
5.	19000 MGM Bonds	11,590.00
6.	200 Chrysler Corp. Purchase Warrants	2,600.00
7.	21 shares A.M.P. Incorporated 10 shares Campbell Red Lake Mines, Ltd.	2,522.63 636.25
8.	5000 Pan Am Bonds	2,570.00
9.	200 shares Beneficial Corp.	14,000.00
10.	200 shares B.F. Goodrich Corp.	4,600.00
11.	16000 N.J. Bell Tel. Bonds	18,784.00
12.	140 shares General Electric Corp. 800 shares General Electric Corp.	8,098.37 46,298.02
13.	8000 Zurn Industries Bonds	6,971.42
14.	1000 Ford Motor Credit Debenture 1 share Wilson Sporting Goods	797.00 14.04
15.	3000 Potomac Electric Power Bonds	3,417.00
16.	100 shares Natomas Company	4,300.00
17.	100 shares Atlantic Richfield	8,000.00
18.	200 shares SCA Services	2,000.00

Exhibit 1

	<u>Description:</u>	<u>Price:</u>
19.	NYSHFA	\$ 13,089.00
	1 share Braniff Airways	2,197.23
	100 shares Gulf & Western	2,300.00
20.	100 shares Transamerica Income Shares	2,100.00
21.	100 shares Duquesne Light Co.	2,300.00
	400 shares Northwest Airlines	9,600.00
22.	10000 Arlan Dept. Store Bonds	3,100.00
23.	300 Wts. Greyhound	1,725.00
	10000 First National City Notes	22,192.22
24.	2000 shares Franklin Stores	60,000.00
25.	13 shares Continental Tel	290.00
	450 shares American LaFrance	3,200.00
	150 shares Photon	575.00
	150 shares Photon	450.00
26.	100 shares Beatrice Foods Co.	200.00
	200 shares Eli Lilly	800.00
	200 shares Eli Lilly	1,200.00
	100 shares Marshall Foods	100.00
	200 J.C. Penney	2,200.00
27.	5 Federal National Mtg. Bonds	4,290.00
28.	24000 Western Airlines Bonds	21,888.00
29.	300 shares Ponderosa Systems	2,100.00
30.	200 shares Ryerson & Haynes, Inc.	800.00
31.	100 shares Utah Idaho Sugar Co.	900.00
32.	100 shares AVCO Corporation	3,900.00
33.	200 shares Husky Oil Ltd.	4,000.00
	800 shares Husky Oil Ltd.	16,800.00
	200 shares International Tel. & Tel.	12,400.00

Exhibit A

	<u>Description:</u>	<u>Price:</u>
34.	900 shares Continental Mtge. Investors	\$ 9,000.00
	100 shares Continental Mtge. Investors	1,000.00
	100 shares Husky Oil Ltd.	2,100.00
35.	100 shares Con Ed	6,400.00
	200 shares Hartz Mountain Pet Foods	1,000.00
	1500 shares Communications Satellite	69,000.00
	200 shares Communications Satellite	9,600.00
36.	600 shares Franklin Stores Corp.	18,000.00
37.	200 shares Community Health Corp.)	
	200 shares Equity Funding Corp.)	
	300 shares Gulf Oil Corp.)	20.00
	315 shares Lane Wood Inc.)	
	2000 shares Coliseum Properties)	
	400 shares Litton Industries	7,200.00
38.	5 Dillingham Corp. Bonds	3,065.00
	100 shares Marion Laboratories	2,700.00
	400 shares National Airlines	6,000.00
39.	100 shares Levitz Furniture Corp.	700.00
40.	160000 National Equipment Rental Bonds)	60,500.00
	22000 National Health Enterprises Bonds)	
	1600 shares Atlantic Industries)	101,200.00
	181000 shares Diversified Industries)	
	1000 Goodrich Realty & Developers Bonds	38,000.00
	3400 shares Franklin Stores Corp.	86,600.00
	500 shares Aetna Life & Casualty Co.	119,600.00
41.	1600 shares Fairchild Camera & Instrument	70,400.00
42.	5000 Western Airlines Bonds	4,560.00
43.	2000 Mobil Oil Bonds	124,000.00
44.	200 Uniroyal Bonds	1,570.00
	1 Pan Am World Bond	1,095.00
45.	200 shares KLM Royal Dutch Airlines	7,200.00
	1900 shares Matsushita Electric Industrial	54,200.00

Exhibit A

	<u>Description:</u>	<u>Price:</u>
46.	15000 LA County Calif Flood Control Bonds	\$ 14,778.68
47.	100 shares Mt. Fuel Supply	7,587.50
	200 shares Mt. Fuel Supply	16,100.00
	100 shares Mt. Fuel Supply	7,962.50
	100 shares Mt. Fuel Supply	7,962.50
48.	100 shares Dome Mines	9,400.00
	100 shares Dome Mines	9,300.00
49.	5 Gulf Resources Bonds	3,945.00
	100 shares Western Airlines	1,000.00
50.	100 shares Columbia Pictures Industries Inc.	500.00
51.	45 Bonds Western Airlines	40,995.00
52.	3 Bonds Tesoro Petroleum	3,228.00
53.	100 shares Warner Communications Inc.	500.00
	100 AVCO Wts.	200.00
	100 shares Intl. Nickel	2,700.00
	100 shares Roan Selection Trust	600.00
	100 shares Ogden Corp.	2,900.00
54.	4500 First National City Bank Notes	9,500.13
55.	100 shares Dupont	5,300.00
56.	100 shares Heublein	4,300.00
57.	800 shares NLT Corp.	19,200.00
	100 shares Automatic Data Processing Inc.	9,200.00
58.	1300 shares Textron	2,600.00
	1000 shares Brown	1,000.00
	600 shares Reserve Oil & Gas	1,800.00
	200 USM Corp. Stamp	1,000.00
59.	900 shares Textron	7,200.00

Exhibit A

	<u>Description:</u>	<u>Price:</u>
60.	1300 shares Seatrain Lines	\$ 2,600.00
61.	100 shares Campbell Red Lake Mines	7,087.50
62.	300 shares General Host Corp	3,900.00
	100 shares General Host Corp	1,300.00
63.	100 shares Eastman Kodak	12,600.00
	2000 Applied Digital Data	FREE
64.	15000 CENCO Instruments Bonds	12,150.00
	14000 Continental Tel. Notes	15,022.00
	100 shares Gen. Instrument	2,337.50
	100 shares Gen. Instrument	2,275.00
66.	300 shares Kroger	4,800.00
	2000 S.S. Kresge	72,000.00
	500 shares Gen. Motors	34,000.00
	2800 shares Gen. Host	16,800.00
	200 shares Consumers Power Co.	5,400.00
	2500 Wts. Chrysler Corp.	27,500.00
	2800 shares Gen. Host Corp.	30,800.00
67.	500 shares ASA Ltd.	40,000.00
68.	200 shares Franklin Stores	6,600.00
69.	200 Mutual of Omaha International Shares	3,400.00
70.	100 Transworld Airline Wts.	1,875.00
71.	90 shares USM Corp.	1,620.00
72.	40 North American Mortgage Investors Bonds	34,400.00
73.	10 shares Public Service Electric & Gas Co.	540.00
74.	1000 shares National Airlines	15,000.00
75.	400 shares Texas Instruments Inc.	5,200.00
76.	5600 shares Warner Communications Inc.	104,629.28
	6300 shares Warner Communications Inc.	112,580.22
		<u>\$1,910,093.66</u>

RECEIVED
 350
 OFFICE OF THE COMPTROLLER OF THE CURRENCY
 NEW YORK, NEW YORK 10004
 BENEFIT OF THE NEW YORK STOCK EXCHANGE
 AND OTHER PRINCIPAL EXCHANGES
 DATE 5-24-73
 Pay \$1,250,000.00 Dollars
 To the order of
 J. P. Morgan & Co.
 100 WALL STREET, NEW YORK, N.Y. 10038
 J. P. Morgan & Co.
 100 WALL STREET, NEW YORK, N.Y. 10038
 10451221 10210-00121 610-664123

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SECURITIES INVESTOR PROTECTION :
CORPORATION, :

Applicant,	:	
SECURITIES AND EXCHANGE COMMISSION,	:	STIPULATION
Plaintiff,	:	72 Civ. 2332
-against-	:	
WEIS SECURITIES, INC.,	:	
Defendant.	:	

-----X
WHEREAS, Stock Clearing Corporation ("SCC") claims (1) that on May 24, 1973 it paid for and delivered to Weis Securities, Inc. ("Weis"), for cash, securities having a value of \$1,910,093.66 (SCC Securities) and (ii) that it received from Weis, on the same day, a Weis check for \$1,135,459.87 representing net cash payment for the SCC Securities which check was on the same day duly deposited by SCC for collection and returned by Weis' bank on May 25, 1973 because of an insufficiency of funds to pay same; and

WHEREAS, SCC has, by Order to Show Cause returnable June 19, 1973, requested Hon. Roy C. Babitt to issue an order (1) directing the Trustee of Weis to prepare and deliver to SCC an accounting in respect of the SCC Securities as more particularly set forth in said Order to Show Cause; and (2) enjoining and restraining the Trustee and his attorneys, servants, agents and employees from selling, delivering or otherwise disposing of the SCC Securities in their possession until such time as the rights of SCC in and to such securities are determined and

adequate safeguards are implemented in respect of such rights; and

WHEREAS, said Order to Show Cause duly came on to be heard before Hon. Roy C. Babitt on June 19, 1973 at which time counsel for SCC and counsel for the Trustee respectively argued in support of and in opposition to the relief requested; and

WHEREAS, at said hearing, counsel for the Trustee represented to the Court that the Trustee, in lieu of being enjoined and restrained from disposing of the SCC Securities, was willing to escrow the sum of \$1,135,459.87 and to have such rights as SCC may have in respect of the SCC Securities or the delivery thereof to Weis attach to said escrowed sum pending a determination of the rights of SCC; and

WHEREAS, at said hearing Hon. Roy C. Babitt directed the Trustee to furnish SCC with the accounting sought by said Order to Show Cause and subsequently adjourned the hearing in respect of SCC's request for a restraining order until July 3, 1973 in order to enable counsel for SCC and the Trustee to prepare the within stipulation;

WHEREAS, pursuant to a stipulation entered into between the Trustee and The Depository Trust Company ("DTC") dated June , 1973 and filed with and so ordered by the Court, an escrow fund has been established to hold certain property (the "DTC Escrow Fund"), consisting of cash of \$942,779.86 and securities having a value of \$185,873, a copy of such stipulation is annexed hereto as Exhibit A;

NOW, THEREFORE, it is hereby stipulated and agreed by the undersigned as follows:

1. The Trustee of Weis shall forthwith deposit in an interest bearing account with a New York Bank the sum of \$1,135,459.87 ("Escrow Fund") subject to the terms of the within stipulation.

2. Upon depositing said Escrow Fund, the Trustee, without incurring liability to SCC, shall be free to dispose of the SCC Securities.

3. All rights of SCC in and to the SCC Securities and/or the proceeds of sale thereof or money value thereof shall attach to said fund, which shall be substituted for the SCC Securities and shall be deemed to be the SCC Securities for the purpose of any future proceedings by SCC in respect of the recovery of the SCC Securities and the fund substituted therefor.

4. The Trustee of Weis, within 30 days from the date of the within Stipulation, shall furnish to SCC the following:

(i) any and all records identifying the SCC Securities including without limitation all records of Weis maintained pursuant to Rule 17a-3 under the Securities Exchange Act of 1934 with respect to the receipt of said securities; and

(ii) to the extent available from existing records of Weis, a statement setting forth the specific time or times of day at which Weis took delivery of the SCC Securities.

5. The Trustee of Weis shall cause to be preserved and exhibited to SCC's counsel at its request any and all documents or records in the Trustee's possession reflecting whether Weis obtained delivery of the SCC Securities for customers and which identify such customers and such of the SCC Securities as may have been obtained by Weis for delivery to such customers, including all records maintained by Weis pursuant to said Rule 17a-3; without, however, conceding the relevancy of such information to a determination of

Exhibit C, Stipulation No. 1

SCC's rights.

6. Notwithstanding any existing court order, SCC, 30 days from the date of the within Stipulation, may institute proceedings to enforce whatever rights and remedies it may have in respect of the SCC Securities (or the Escrow Fund substituted therefor) and SCC shall be entitled to pretrial discovery from the Trustee prior to the commencement of such proceedings but no earlier than 30 days from the date of the within Stipulation, as to facts and circumstances deemed necessary by it to institute such proceedings, provided, however, that the institution of such proceedings shall not operate as a bar to SCC's assertion against the Weis Estate of claims which it may have as a customer, broker or dealer or in any other capacity and SCC shall be deemed to have given timely notice to the Trustee of all such claims and shall not be barred from asserting the same subsequent to adjudication of proceedings instituted by it pursuant to the within Stipulation by reason of the existence of any bar orders issued by this Court or provisions of the Securities Investor Protection Act of 1970 fixing or proscribing a time within which such claims might otherwise be required to be filed.

7. SCC agrees that the Trustee, in partial satisfaction of the Trustee's obligation to deposit \$1,135,459.87 in the Escrow Fund in accordance with paragraph 1 above and subject to the terms and conditions set forth in paragraph 8 below, may assign all of the right, title and interest of the Trustee and the Weis Estate in and to the DTC Escrow Fund which, upon such assignment, shall be deemed to be part of the Escrow Fund ("Escrow Assignment").

8. The Trustee hereby elects to make the Escrow

Assignment and, accordingly, does hereby assign, set-over and transfer to SCC all of the right, title and interest of the Trustee and the Weis Estate in and to the DTC Escrow Fund, subject to the Trustee's right to contest Set-Off Claims (as defined in the stipulation annexed hereto as Exhibit A) of DTC as contemplated by said stipulation and subject to any rights of DTC in and to the DTC Escrow Fund as set forth in said stipulation and upon the following additional terms and conditions:

(1) in the event that the Trustee shall make any payments out of the DTC Escrow Fund to any person other than SCC, the Trustee shall thereupon pay an equivalent amount into the Escrow Fund;

(11) in the event that, prior to a final determination of DTC's rights in the DTC Escrow Fund, it shall be finally determined that SCC is entitled to the SCC Securities (or the Escrow Fund and the DTC Escrow Fund substituted therefor), or any part thereof, SCC shall not be entitled to any payment from the DTC Escrow Fund until DTC's rights therein are finally determined, and upon such final determination, and subject to payment of any amounts out of the DTC Escrow Fund to persons other than SCC attendant upon such final determination, SCC shall be entitled to payment from the DTC Escrow Fund of such part thereof as shall satisfy its rights and if the amounts in the Escrow Fund and the DTC Escrow Fund are insufficient to satisfy such rights, the deficiency shall be paid by the Trustee as a first priority administration expense claim entitled to payment ahead of all administration claims which may be asserted under § 64.a.(1) of the Bankruptcy Act; and

Exhibit C, Stipulation No. 1

(iii) in the event that it shall be finally determined that SCC has no rights or only partial rights in and to the SCC Securities (or the Escrow Fund and the DTC Escrow Fund substituted therefor) the Escrow Assignment shall be of no further force and effect as to the whole thereof or that portion thereof to which SCC is not entitled by reason of such final determination;

9. The substitution of the Escrow Fund and of the DTC Escrow Fund for the SCC Securities, as herein provided, is intended solely to preserve the status quo with respect to the rights of the parties pending final ^Ajudication in respect of such rights by the Court and shall in no way be deemed to waive, diminish or enlarge any of such rights.

Dated: New York, New York
July 5, 1973

Edward S. Redington
Edward S. Redington, Trustee

Stock Clearing Corporation

By Edward S. Redington

So Ordered this 30th day
of July, 1973.

Referee in Bankruptcy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

SECURITIES INVESTOR PROTECTION	:	
CORPORATION,	:	
Applicant,	:	
SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	STIPULATION
-against-	:	72 Civ. 2332
WEIS SECURITIES, INC.,	:	
Defendant.	:	

----- x

WHEREAS, by Order of Hon. Roy C. Babitt entered on June 4, 1973 (the "Order") the Court directed any bank, upon receipt of a copy of the Order, holding funds or other property of Weis Securities, Inc. ("Weis") in accounts maintained for or on behalf of Weis with respect to which such bank has no lien, claim of title or interest adverse to Edward S. Redington, Esq., Trustee ("Trustee") for the liquidation of the business of Weis to deliver all such funds or other property to the Trustee's bank account with the Irving Trust Company, One Wall Street, New York, New York 10005 ("ITC"), as directed by the Trustee; and

WHEREAS, The Depository Trust Company, a limited purpose trust company formed under the New York Banking Law ("DTC"), as of the close of business on June 26, 1973 (i) held funds in the amount of \$942,779.86 for the account of Weis (the "Funds") and (ii) held in custody, pursuant to a Clearing Fund Agreement with Weis, securities having a fair market value at the close of business on June 26, 1973 of \$185,873 and which

Exhibit C, Stipulation No. 2

are described in Exhibit A hereto (the "Securities"); and

WHEREAS, the applicability of the Order to DTC has not been determined; and

WHEREAS, DTC and the Trustee, pending a determination of DTC's rights in and to the Funds and the Securities desire to set the Funds and the Securities apart;

NOW, THEREFORE, it is hereby stipulated and agreed by the undersigned as follows:

1. DTC shall turn over the Funds to ITC, as directed by the Trustee, for deposit in a separate interest bearing account (the "Escrow Fund") which shall not contain funds other than those contemplated herein and interest thereon and shall cause the Securities to be delivered to ITC, as directed by the Trustee, for deposit thereof, or the sale thereof by the Trustee and the deposit of the proceeds of such sale, in the Escrow Fund, all subject to the following terms and conditions:

(i) the Escrow Fund shall be at all times subject to any and all claims by DTC against Weis for monies or other property which DTC, under Section 68. of the Bankruptcy Act, is entitled to set-off against the monies so turned over to the Trustee ("Set-Off Claims");

(ii) in the event that DTC determines and verifies from its records the existence of any Set-Off Claims which arise as a result of a payment by DTC, or the obligation of DTC to make payment, to a third party or are chargeable against Weis under the Rules and procedures of DTC, the Trustee, upon receipt from DTC of its written statement certifying the amount of such Set-Off Claims, together with an explanation thereof, shall pay to DTC from the Escrow Fund an amount equal to such Set-Off Claims; provided, however, that nothing herein

Exhibit C, Stipulation No. 2

contained shall preclude the Trustee from contesting such Set-Off Claims and any payment made to DTC hereunder shall be subject to further order of this Court in the event such Set-Off Claims are contested by the Trustee; and

(iii) subject to payments to DTC pursuant to clause (ii) above, the property held in the Escrow Fund, plus interest earned thereon from the date of creation of the Escrow Fund, shall be maintained as a separate fund subject to DTC's Set-Off Claims until DTC's Set-Off Claims are finally determined.

2. Nothing herein shall be deemed to limit the rights of the Trustee to institute any action to determine his entitlement to any and all funds held by DTC resulting from transactions with Weis (including the Escrow Fund) and to have such funds turned-over to the Trustee.

3. The creation of the Escrow Fund, as herein provided, is intended solely to preserve the status quo with respect to the rights of the parties pending final adjudication in respect of such rights by the Court and shall in no way be deemed to waive, diminish or enlarge any of such rights, it being the intention that until a final determination of such rights, the Escrow Fund shall be treated for all purposes as though the property held therein remained held by DTC.

Dated: New York, New York
July 3, 1973

s/ Edward S. Redington
Edward S. Redington, Trustee

The Depository Trust Company

By M. [Signature]

So Ordered this 3rd day
of July, 1973.

s/ P. [Signature]
Referee in Bankruptcy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
SECURITIES INVESTOR PROTECTION
CORPORATION,

Applicant,

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

WEIS SECURITIES, INC.,

Defendant.

73 Civ. 2332

ANSWER

----- x
STOCK CLEARING CORPORATION,

Plaintiff,

-against-

WEIS SECURITIES, INC. and EDWARD
S. REDINGTON, as Trustee of Weis
Securities, Inc.,

Defendants.

----- x
EDWARD S. REDINGTON, as Trustee of Weis Securities,
Inc. ("Weis"), by his attorneys Hughes Hubbard & Reed, answers
the complaint of Stock Clearing Corporation ("SCC") as
follows:

1. Admits the allegations of paragraph 1.
2. Admits the allegations of paragraph 2.
3. Admits the allegations of paragraph 3.
4. Denies each and every allegation contained
in paragraph 4 except admits that (1) on or about
May 23 and May 24, 1973 the securities listed in
Exhibit A to the complaint were delivered to Weis

Answer

through the facilities of SCC except denies that the securities listed in items 26, 29, 58, 59, and 75, the 100 shares Warner Communications Inc. listed in item 53, and the 2,800 shares Gen. Host listed in item 66 of Exhibit A were delivered to Weis and (2) on May 24, 1973 Weis delivered to SCC a check in the amount of \$1,135,459.87, a copy of which is annexed to the Complaint as Exhibit B.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6.

7. Denies each and every allegation contained in paragraph 7 except admits that he and SCC entered into a stipulation dated July 3, 1973, a copy of which is annexed to the Complaint as Exhibit C, and that he placed sums in escrow pursuant to said stipulation.

8. Admits the allegations of paragraph 8.

9. Denies each and every allegation contained in paragraph 9.

10. In response to paragraph 10, repeats and realleges each and every admission, denial, or other response in paragraphs 4 through 8 hereof with the same force and effect as though here set forth in full.

11. Denies each and every allegation contained in paragraph 11.

12. Denies each and every allegation contained in paragraph 12.

FIRST AFFIRMATIVE DEFENSE

13. The complaint fails to state a claim on which relief could be granted.

SECOND AFFIRMATIVE DEFENSE

14. SCC has waived any right to reclaim by failing to exercise its alleged right of reclamation within 10 days from the time of delivery of the stock to Weis.

THIRD AFFIRMATIVE DEFENSE

15. SCC has waived the right to reclaim by failing to exercise its alleged right of reclamation within a reasonable time.

FOURTH AFFIRMATIVE DEFENSE

16. SCC is estopped to demand reclamation, and has waived its alleged right of reclamation, by reason of its failure to tender to Weis the securities delivered by Weis on May 24, 1973.

WHEREFORE, defendant demands judgment dismissing the complaint and awarding him his costs and disbursements.

Dated: New York, New York
July 6, 1974

HUGHES HUBBARD & REED
Attorneys for Edward S. Redington,
As Trustee of Weis Securities, Inc.

By James W. Fickens
A Member of the Firm
One Wall Street
New York, New York 10005
WH3-6500

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

In the Matter :
of :
WEIS SECURITIES, INC., :
Debtor. :
----- x 73 Civ. 2332

STOCK CLEARING CORPORATION, :
Plaintiff, : STIPULATION
-against- :
WEIS SECURITIES, INC. and EDWARD S. :
REDINGTON, as Trustee of Weis Securities, :
Inc., :
Defendants. :
----- x

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys for Stock Clearing Corporation ("SCC") and Edward S. Redington, As Trustee of Weis Securities, Inc. (the "Trustee") that for the purposes of this action only, the following facts shall be taken as true:

1. SCC is a New York corporation.
2. At all times relevant hereto, Weis Securities, Inc. ("Weis") was a member of SCC. Edward S. Redington was appointed Trustee for the liquidation of the business of Weis on May 30, 1973.
3. Exhibit A hereto is a true copy of the Clearing Member's Agreement between Weis and SCC ("Agreement").
4. Exhibit B hereto, excluding the captions contained therein, is a true copy of the SCC By-Laws ("By-Laws").

Stipulation of Facts

5. Exhibit C hereto, excluding the captions contained therein, is a true copy of the SCC Rules ("Rules").

6. The Agreement, By-Laws and Rules are collectively referred to hereinafter as the "Applicable Rules".

7. At all times relevant hereto, the transactions between SCC and Weis hereinbelow described were transacted subject to the Applicable Rules.

8. On May 23, 1973 and May 24, 1973, Weis brought items in the dollar amount of \$782,228.59 computed in accordance with the Applicable Rules to SCC to be picked up by other members of SCC on May 24, 1973 ("Brought-In Items").

9. On May 24, 1973, Weis picked up from SCC securities and other items in the dollar amount of \$1,909,093.66 computed in accordance with the Applicable Rules ("Picked-Up Items").

10. Exhibit D hereto is a true list of the Picked-Up Items. The dollar amount listed for each item has been computed in accordance with the Applicable Rules.

11. Exhibit E hereto is a true classification by categories of the Picked-Up Items. The classification is based upon the books and records of Weis. The dollar amount listed for each category has been computed in accordance with the Applicable Rules.

12. Weis' SCC settlement amount for May 24, 1973 was debited pursuant to Rule 10 of the Rules in the amount of \$1,786.48 for New York State Stock Transfer Taxes. SCC paid said taxes to New York State.

Stipulation of Facts

13. Weis' SCC settlement account for May 24, 1973 was debited in the amount of \$7,508.32 for the clearance cash adjustment applicable to Weis pursuant to Rule 5, Section 3 of the Rules, on account of trades effected by Weis and due for settlement on May 24, 1973. A clearance cash adjustment (either debit or credit) arises because the price per share for securities listed on SCC balance orders is a rounded-off figure established by SCC (i.e., the "settlement price") which may differ from the price at which the SCC member has effected the trade on the floor of the New York Stock Exchange (i.e., the "contract price"). The clearance cash adjustment is the difference between the amounts computed on the basis of the contract prices and the amounts computed on the basis of the settlement prices for trades settling on May 24, 1973.

14. On May 24, 1973 Weis issued an uncertified check to SCC in the amount of \$1,135,459.87. Said amount represented the difference between the amounts debited to Weis' SCC settlement account for May 24, 1973 for the items listed in paragraphs 12 and 13 above and the Picked-Up Items and the amounts credited to Weis' SCC settlement account for May 24, 1973 for the Brought-In Items.

15. Weis' uncertified check in the amount of \$1,135,459.87 was not honored by the bank upon which it

Stipulation of Facts

was drawn. No part of Weis' \$1,135,459.87 debit balance has been paid and no part of the securities referred to in paragraph 16 below has been returned to SCC.

16. Of the Picked-Up Items referred to in paragraph 9 above, securities having a dollar amount of \$1,714,757.39 computed in accordance with the Applicable Rules were retained by Weis or the Trustee at least until the Stipulation attached as Exhibit C to the Complaint herein was entered into.

17. The depositions taken in this action of the following witnesses may be used in this action by any party for any purpose:

Stanley Petroski
Howard Waldenstrom
David Fuchs
Louis Dybo
David Hoyt

Attached hereto as Exhibit F is a list of agreed upon corrections of the transcripts of said depositions.

18. Count II of the Complaint herein is stricken with prejudice.

Dated: New York, New York
November 27, 1974

MILBANK, TWEED, HADLEY & McCLOY

By Paul D. McCloy

A Member of the Firm
Attorneys for SCC

So ordered this 3rd day
of December, 1974.

HUGHES HUBBARD & REED

By George A. Hubbard

A Member of the Firm
Attorneys for the Trustee

s/ Roy Babitt
Honorable Roy Babitt,
Bankruptcy Judge

EXHIBIT A

STOCK CLEARING CORPORATION

44 BROAD STREET, NEW YORK

CLEARING MEMBER'S AGREEMENT

As provided for in Article V, Section 3, of the By-Laws

The undersigned hereby makes application to continue as or become, as the case may be, a Clearing Member of the Stock Clearing Corporation (hereinafter called the "Corporation") and agrees:

The undersigned while a Clearing Member will clear or settle through the Corporation directly or through another Clearing Member every contract and transaction to which the undersigned may be a party and which the By-Laws or Rules of the Corporation may require to be cleared or settled through the Corporation.

The undersigned while a Clearing Member will abide by the By-Laws and Rules of the Corporation and shall be bound by all the provisions thereof including the provisions prescribing the liens which the Corporation shall have upon stocks and securities which are the subject of transactions had for the undersigned's account and the Corporation shall have all the liens, rights and remedies contemplated by said By-Laws and Rules of the Corporation. Notwithstanding that the undersigned may have ceased to be a Clearing Member, the undersigned shall continue to be bound by the By-Laws and Rules of the Corporation as to all matters and transactions occurring while the undersigned was a Clearing Member.

Said By-Laws and Rules of the Corporation shall be a part of the terms and conditions of every contract or transaction which the undersigned while a Clearing Member may make or have with the Corporation and of every contract or transaction into which the undersigned while a Clearing Member may enter and which the By-Laws or Rules of the Corporation may require to be cleared or settled through the Corporation.

The undersigned will not clear or settle through the Corporation any contract or transaction unless the By-Laws and Rules of the Corporation are a part of the terms and conditions of such contract or transaction.

The undersigned will pay to the Corporation the compensation provided for by the By-Laws and Rules of the Corporation for clearing and other services rendered to the undersigned while a Clearing Member and such fines as may be imposed in accordance with such By-Laws and Rules of the Corporation for the failure of the undersigned while a Clearing Member to comply therewith.

The undersigned will pay to the Corporation any amounts which pursuant to the provisions of Article VII of the By-Laws shall become payable by the undersigned to the Corporation.

In case the Clearing Fund together with the other resources of the Corporation applicable to the payment of its liabilities are insufficient to enable it to meet such liabilities, the undersigned will contribute toward such deficiency a sum bearing the same proportion thereto that the undersigned's contribution to the Fund (as fixed at the time or times when the liabilities are incurred) bears to such Fund, not exceeding, however, the amount of such contribution.

The undersigned's books and records shall at all times be open to the inspection of the duly authorized representatives of the Corporation and the Corporation shall be furnished with all such information in respect to the undersigned's business and transactions, as it may require, provided that if the undersigned shall cease to be a Clearing Member the Corporation shall have no right to inspect the undersigned's books and records or to require information relating to transactions wholly subsequent to the time when the undersigned ceases to be a Clearing Member.

The determination of the Corporation of all questions affecting the charges to which the undersigned's contribution to the Clearing Fund are or may be subject shall be final and conclusive.

The undersigned will, to the extent of securities delivered by or for the account of the undersigned to the Corporation for inclusion within the Central Certificate Service (hereinafter called CCS) established by the Corporation, participate in CCS in accordance with such Rules and procedures as may from time to time be established by the Corporation and will pay such fees and charges in connection therewith as the Corporation may from time to time impose.

The undersigned hereby appoints the Corporation its agent and attorney-in-fact (a) to enter into custody agreement with any bank or trust company hereinafter referred to as "bank") chosen by it, such agreement to be in such form and containing such terms and provisions as the Corporation may in its sole discretion approve and the Clearing Member hereby ratifies and confirms any and all action heretofore taken by the Corporation in this connection, and (b) to instruct each bank as to the delivery of any and all securities included within CCS and held by any such Bank.

The undersigned will, except as otherwise permitted by the Corporation, give all instructions by it concerning any security held by the Corporation or any bank subject to the instructions of the Corporation through the Corporation and not otherwise.

Each bank shall be entitled to act and rely in all respects upon, and that as regards such bank the undersigned shall be bound by, the instructions of the Corporation with respect to any security from time to time held by the Corporation or such bank subject to the instructions of the Corporation.

Each security delivered for its account to CCS for inclusion therein may be transferred into the name of any nominee designated by the Corporation and retained by the Corporation or delivered to such bank as the Corporation may select as custodian.

The undersigned will be bound by any amendment to the By-Laws or Rules of the Corporation with respect to any transaction occurring subsequent to the time such amendment takes effect as fully as though such amendment were now a part of the By-Laws and Rules of the Corporation, provided, however, that no such amendment shall affect the undersigned's right under the provisions of Section 1 of Article V of the By-Laws of the Corporation to cease to be a Clearing Member or alter the provisions of Article VII of the By-Laws of the Corporation unless before such amendment becomes effective the undersigned is given an opportunity to give written notice to the Corporation of the undersigned's election that the Corporation shall definitely cease to act for the undersigned. The undersigned will be bound by all the provisions of this agreement immediately upon the approval by the Corporation of this application. This agreement shall be binding upon the parties hereto and their respective successors and assigns.

Dated:

7

day of

August

, Nineteen Hundred and 70

Voisin Cannon, Inc.
by [Signature]

Exhibit A

State of New York, } ss.:
 County of New York, }

On this _____ day of _____, Nineteen Hundred and _____
 before me personally came _____, to me known and known to me to be
 a member of the firm of _____ and acknowledged to me that he
 executed the foregoing instrument in the name of and on behalf of said firm.

State of New York, } ss.:
 County of New York, }

On this 7th day of August, Nineteen Hundred and 70
 before me personally came *Lieut. J. H. H. H.*; to me known, who, being
 by me duly sworn, did depose and say that he resides in *Crittenden, N.Y.*;
 that he is (a) (Nic) *E. J. H. H. H.* of the *U.S. Army*, the
 corporation described in and which executed the above instrument; that he knows the seal of said corporation;
 that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of
 Directors of said corporation, and that he signed his name thereto by like order.

GERALDINE GIRSNER
 NOTARY PUBLIC, STATE OF NEW YORK
 No. 24-1443123
 Qualified in Kings County
 Term expires March 30, 1971

Extract of Exhibit B

221 5-72

Stock Clearing Corporation--By-Laws

4373

ARTICLE VII

Clearing Fund

§ 3151

Contributions

SEC. 1. The contribution of each Clearing Member, each Associate Member and each Affiliate Member to the Clearing Fund shall be fixed by the Stock Clearing Corporation in its discretion at the time of the Clearing Member's, Associate Member's or Affiliate Member's application for membership and may thereafter from time to time be increased or diminished by the Stock Clearing Corporation but the minimum contribution to be made by a Clearing Member, Associate Member or Affiliate Member shall be Ten Thousand Dollars.

The Stock Clearing Corporation may permit a part of a Clearing Member's, Associate Member's or Affiliate Member's contribution to the Clearing Fund to be evidenced by an open account indebtedness secured by un-matured bearer bonds which are direct obligations of, or obligation guaranteed as to principal and interest by, the United States or un-matured bearer bonds which are general obligations of, or obligations guaranteed by, a State or political subdivision thereof which are in the first or second ratings of any nationally known statistical service, having a market value not less than the amount of such open account indebtedness. Such bonds shall be pledged to Stock Clearing Corporation on such terms and conditions as it shall require. The Stock Clearing Corporation shall fix the minimum amount of each Clearing Member's, each Associate Member's and each Affiliate Member's cash contribution to the Clearing Fund and may from time to time increase or diminish such minimum amount. Each Clearing Member, each Associate Member and each Affiliate Member shall forthwith pay all or such part of its open account indebtedness as Stock Clearing Corporation may request. The bonds pledged by a Clearing Member, Associate Member or Affiliate Member to secure its open account indebtedness may be held by Stock Clearing Corporation or for its account by a Bank or Trust Company.

Amendment.

November 24, 1970.

March 30, 1972.

§ 3152

Use of Fund

SEC. 2. The Clearing Fund may be used by the Stock Clearing Corporation for the purposes of its business as defined in its Articles of Incorporation, and in the discretion of its Board of Directors may from time to time be partially or wholly invested by the Corporation for its account in securities issued or guaranteed by the United States and to the extent not so invested shall be deposited by the Stock Clearing Corporation in a special account or accounts in its name in such depository or depositories in the City of New York as may be selected by the Stock Clearing Corporation. Any securities in which the Clearing Fund is invested shall be the property of the Stock Clearing Corporation, may be used by it for the purposes of its business and may be pledged by it as security for loans made to it and for its other obligations.

New York Stock Exchange Guide

SCE Art. VII § 3152

Extract of Exhibit B

4576

Stock Clearing Corporation—By-Laws

221 5-72

Any interest paid by the depositories of cash in the Clearing Fund or paid on securities in which the Fund or any part thereof may be invested shall belong to the Stock Clearing Corporation. No interest shall be paid to the Clearing Members, Associate Members or Affiliate Members on the amounts contributed by them to the Clearing Fund.

Amendment.

November 24, 1970.

March 30, 1972.

§ 3153

Discharge of Liability of Member

Sec. 3. If any Clearing Member, Associate Member or Affiliate Member shall fail to discharge duly any liability to the Stock Clearing Corporation, the amount of his contribution or so much thereof as is necessary shall forthwith be applied toward the discharge of such liability and such Clearing Member, such Associate Member or such Affiliate Member shall immediately upon demand make good the deficiency in the amount of his contribution resulting from such application.

Amendment.

November 24, 1970.

March 30, 1972.

§ 3154

Loss in Excess of Contribution

Sec. 4. If the Stock Clearing Corporation suffers a loss in excess of a Clearing Member's, Associate Member's or Affiliate Member's contribution to the Clearing Fund by reason of his default, or suffers a loss as a result of clearing or settling or carrying out any contract or transaction for a Clearing Member, Associate Member or Affiliate Member or by reason of the insolvency of a depository, or larceny, or embezzlement, such excess loss, or such loss, as the case may be, shall to the extent of the surplus of the Stock Clearing Corporation be made good therefrom, but to the extent that said surplus is insufficient to make it good it shall be made good out of the Clearing Fund and charged pro rata against the contributions as fixed at the time of the transaction from which the loss results of the Clearing Members, Associate Members and Affiliate Members, other than the Clearing Member, Associate Member or Affiliate Member, if any, primarily liable.

In so far, however, as a loss sustained through the default of a Clearing Member, Associate Member or Affiliate Member in any contract or transaction with another Clearing Member or other Clearing Members, Associate Member or other Associate Members or Affiliate Member or other Affiliate Members is under the Rule of the Stock Clearing Corporation made good by such other Clearing Member or Clearing Members, Associate Member or Associate Members or Affiliate Member or other Affiliate Members it is not to be deemed a loss sustained by the Stock Clearing Corporation within the meaning of this section.

Amendment.

November 24, 1970.

March 30, 1972.

§ 2153 SEC. ART. VII

© 1972, Commerce Clearing House, Inc.

te-
d-
ch-
the
G-
then
mad
pro
cha
tion
Mem

§ 31

S
Mem
be re
at the
Mem
might
tribut
Assoc
appro
Assoc
trans
ties o

Ac

Ne

Mi

§ 312

S
Cleari
increa
writte
definit
notice
amon
he sh
increa
person
shall
as inc
Mem
vision

New Y

Extract of Exhibit B

221 5-72

Stock Clearing Corporation—By-Laws

4577

§ 3155

Liabilities Guaranteed

SEC. 5. All liabilities of the Stock Clearing Corporation shall be guaranteed by the Clearing Fund which so far as necessary shall be applied to the discharge of such liabilities. Amounts paid out of the Clearing Fund to discharge liabilities of the Stock Clearing Corporation shall be made good out of the existing surplus of the Stock Clearing Corporation, and if such payment does not represent a loss of the character specified in Section 4 of this Article, then, in so far as the surplus is insufficient to make the same good, it shall be made good out of the capital of the Stock Clearing Corporation. Amounts paid out of the Clearing Fund, and not made good as herein provided, shall be charged pro rata against the contributions as fixed at the time of the transactions from which the liabilities result of the Clearing Members, Associate Members and Affiliate Members, other than those, if any, primarily liable.

Amendment.

November 24, 1970.

March 30, 1972.

§ 3156

Return of Contribution

SEC. 6. Whenever a Clearing Member, Associate Member or Affiliate Member definitively ceases to be such, the amount of his contribution shall be returned to him or his representatives, but not until all transactions open at the time he ceases to be a Clearing Member, Associate Member or Affiliate Member from which losses or payments chargeable to the Clearing Fund might result have been closed and all amounts chargeable against his contribution on account of transactions had while he was a Clearing Member, Associate Member or Affiliate Member have been deducted or, with the approval of the Stock Clearing Corporation, another Clearing Member, Associate Member or Affiliate Member has been substituted on each such transaction or he has presented to Stock Clearing Corporation such indemnities or guarantees as it in its sole discretion deems satisfactory.

Amendment.

November 24, 1970.

March 30, 1972.

§ 3157

Increase of Contribution

SEC. 7. If the contribution to the Clearing Fund to be made by a Clearing Member, Associate Member or Affiliate Member is increased, such increase shall not become effective until he is given an opportunity to give written notice to the Stock Clearing Corporation of his election that it shall definitively cease to act for him. If, however, he does not give such written notice before the time specified in the notice to him of the increase in the amount of his contribution at the time when the same becomes effective he shall contribute to the Stock Clearing Corporation the amount of the increase and the liability of his contribution for losses and his additional personal liability under his agreement with the Stock Clearing Corporation shall thereafter be fixed and determined by the amount of his contribution as increased. If a pro rata charge against any Clearing Member's, Associate Member's or Affiliate Member's contribution is made pursuant to the provisions of Section 4 or Section 5 of this Article, he may at any time within

New York Stock Exchange Guide

SCC Art. VII § 3157

Extract of Exhibit B

4578

Stock Clearing Corporation—By-Laws

221 5-72

two days after notice to him of such charge give written notice to the Stock Clearing Corporation of his election that it shall definitively cease to act for him. If he gives such notice the amount of the pro rata charge against his contribution shall nevertheless be deducted from the amount of his contribution and such pro rata charge shall not affect the amount of the liability of his contribution or his additional personal liability on account of other transactions occurring before he ceases to be a Clearing Member, Associate Member or Affiliate Member but the aggregate amount of the liability of his contribution and his additional personal liability by reason of such pro rata charge and such other transactions shall not exceed the amount of his contribution plus One Hundred per cent thereof, except that he must carry out any obligation to make good the deficiency in the amount of his contribution resulting from a previous pro rata charge.

Amendment.

November 24, 1970.

March 30, 1972.

§ 3153

Decrease of Contribution

SEC. 8. If a Clearing Member's, Associate Member's or Affiliate Member's contribution to the Clearing Fund after having been fixed by the Stock Clearing Corporation and paid in by the Clearing Member, Associate Member or Affiliate Member is thereafter decreased by the Stock Clearing Corporation, the decrease shall be paid, subject to periodic review, to the Clearing Member, Associate Member or Affiliate Member as soon as all transactions open at the time of such decrease from which losses and payments chargeable to the Clearing Fund might result have been closed and after the amount if any to be charged against his contribution on account of transactions previously had have been made good by him.

Amendment.

November 24, 1970.

November 1, 1971.

March 30, 1972.

§ 3159

Recovery of Loss

SEC. 9. If a loss charged pro rata against the contributions of Clearing Members, Associate Members and Affiliate Members is afterward recovered by the Stock Clearing Corporation, in whole or in part, the net amount of such recovery shall be credited to the Clearing Members, Associate Members and Affiliate Members against whose contributions the loss was charged in proportion to the amounts charged against their respective contributions whether or not they are still Clearing Members, Associate Members or Affiliate Members.

Amendment.

November 24, 1970.

March 30, 1972.

§ 3150 SEC Art. VII

© 1972, Commerce Clearing House, Inc.

§ 317

the
which
been
the
con-
ties
Mem-
and
Mem-
to
in the
hereof
con-
Clear-
amount
pres-
will
proc-
or
and
Clear-
mem-
Art. 7
trans-
Mem-
it may
and ce-
bers at
Clear-
Affili-
pendia
Mem-
the Ne-
who at
New York

Extract of Exhibit B

111 1-11

Stock Clearing Corporation—By-Laws

4579

§ 3160

Surplus and Dividends

Sec. 10. The net annual earnings of the Stock Clearing Corporation in excess of six per cent. of the amount of its capital stock shall be carried to surplus until the surplus equals \$500,000. After the surplus equals \$500,000 all or any part of the net annual earnings may be distributed as dividends.

Amendments.

August 23, 1939; February 7, 1947; January 14, 1949; January 1, 1951; May 1, 1956; May 23, 1960.

ARTICLE VIII

Rules

§ 3175

Controlling Rules

The Board of Directors shall prescribe and from time to time amend the Rules of the Stock Clearing Corporation. Said Rules shall determine what contracts and transactions between Clearing Members, Associate Members and Affiliate Members shall be cleared or settled through the Stock Clearing Corporation and may regulate the clearing or the settlement of such contracts and transactions and the receipt and delivery of stocks and securities on contracts and transactions between Clearing Members, Associate Members and Affiliate Members and the payment therefor and the delivery and receipt by the Stock Clearing Corporation for account of Clearing Members, Associate Members and Affiliate Members of stocks and securities to and from banks, bankers, trust companies and other non-members named in the lists for which provision is made in Sections 2 and 4 of Article VI hereof, and the receipt from and payment to said banks, bankers, trust companies and other non-members of the amount of loans made by them to Clearing Members, Associate Members and Affiliate Members and the other amounts payable in connection with such receipts and deliveries and may also prescribe the terms and conditions on which the Stock Clearing Corporation will act for Clearing Members, Associate Members and Affiliate Members in procuring the transfer of stocks or securities on the books of the corporations or associations issuing the same. Said Rules may also prescribe the terms and conditions on which the Stock Clearing Corporation will act for such Clearing Members, Associate Members, Affiliate Members and such non-members named in the lists for which provision is made in Section 3 of Article VI hereof in regard to the clearing or settling of any contract or transaction and the terms and conditions on which it will act for Clearing Members, Associate Members and Affiliate Members in any matters in which it may act for them under its Certificate of Incorporation, and shall prescribe and define the duties and obligations of Clearing Members, Associate Members and Affiliate Members in connection with all matters in which the Stock Clearing Corporation may act for Clearing Members, Associate Members and Affiliate Members and shall also prescribe and define the manner in which pending transactions of Clearing Members, Associate Members and Affiliate Members for whom it ceases to act or who are suspended or expelled from the New York Stock Exchange, Inc. in the case of a Clearing Member, or who are suspended or expelled from the American Stock Exchange, Inc. in the

New York Stock Exchange Guide

SCC Art. VIII § 3175

Mem-
ber-
stock
clear-
ing
cor-
por-
ation,
Inc.

Clearing
covered
by the
act of
the
Members
and in
all other
matters

House, Inc.

Extract of Exhibit C

221 5-72

4601

Stock Clearing Corporation Rules

*(Adopted, August 29, 1945, Pursuant to Article VIII
of the By-Laws of Stock Clearing Corporation)*

§ 3301

Definitions and Descriptions

Rule 1. Unless the context requires otherwise, the terms defined in this Rule shall, for all purposes of the Rules, have the meanings herein specified

The Exchange

The term "the Exchange" means the New York Stock Exchange, Inc.

The Corporation

The term "the Corporation" means Stock Clearing Corporation.

Security

The term "security" "securities" includes stocks, bonds, notes, certificates of deposit or participation, trust receipts, rights, warrants and other similar instruments which may be the subject of contracts and transactions with which the Corporation has to do.

By-Laws

The term "By-Laws" means the By-Laws of the Corporation as the same may be amended from time to time.

Board of Directors

The term "Board of Directors" means the Board of Directors of the Corporation.

Cleared Securities

The term "Cleared Securities" means securities included in the list for which provision is made in Section 1 of Article VI of the By-Laws.

Non-Cleared Securities

The term "Non-Cleared Securities" means securities traded on the Exchange other than cleared securities.

Clearing Members

The term "Clearing Members" means member organizations of the Exchange who have qualified pursuant to the provisions of Article V of the By-Laws.

New York Stock Exchange Guide

SCC Rule 1 § 3301

Inc.

Extract of Exhibit C

4002

Stock Clearing Corporation—Rules

221 5-92

§ 3301 Continued

Non-Clearing Members

The term "Non-Clearing Members" means member organizations of the Exchange who have not qualified pursuant to the provisions of Article V of the By-Laws but who have entered into an agreement with the Corporation pursuant to the provisions of Section 3 of Article VI of the By-Laws.

Associate Members

The term "Associate Members" means the following organizations which have qualified pursuant to the provisions of Article V of the By-Laws and any applicable Rules of the Corporation:

- (i) member firms and member corporation of the American Stock Exchange, Inc. which are not member organizations of the New York Stock Exchange, Inc.;
- (ii) Non-Member Banks named from time to time on one of the lists for which provision is made in Section 4 of Article VI of the By-Laws; and
- (iii) any management company registered under Section 8 of the Investment Company Act of 1940, as amended.

Affiliate Members

The term "Affiliate Members" means clearing corporations of national securities exchanges registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, which have qualified pursuant to the provisions of Article V of the By-Laws.

Non-Member Banks

The term "Non-Member Banks" means banks and trust companies which are members of the Federal Reserve System, or are supervised and examined by state and federal authorities having supervision over banks, which are named from time to time on one of the lists for which provision is made in Section 4 of Article VI of the By-Laws.

Non-Members

The term "Non-Members" means all persons, firms and corporations other than Clearing Members, Associate Members, Affiliate Members, Non-Clearing Members or Non-Member Banks, named from time to time on one of the lists for which provision is made in Section 4 of Article VI of the By-Laws.

He, him, his

The words "he", "him" and "his", when used with respect to all Members, shall include partnerships and corporations as well as individuals, when the context so requires.

Business day

The term "Business day" means any day on which the Exchange is open for business. In accordance with the Rules of the Exchange, however, on any

§ 3301 CCC Rule 1

© 1972, Commerce Clearing House, Inc.

Extract of Exhibit C

200 1-77

Stock Clearing Corporation—Rules

4603

business day that the banks, transfer agencies and depositories for securities in New York State are closed, no deliveries shall be made.

Clearance Operation

The term "Clearance Operation" covers all the operations having to do with Cleared Securities to which these Rules are applicable up to and including the issuance of balance orders by the Clearance Department of the Corporation directing the receipt and delivery of securities. Such orders shall be deemed to have been issued when they are available to Clearing Members, although they may not in fact have been distributed to such Clearing Members.

Clearing House Comparison service

The term "Clearing House Comparison service" covers all the operations having to do with the supplementary comparison service provided for in Section 8 of Rule 4 up to and including the issuance of orders by the Clearance Department of the Corporation directing the receipt and delivery of securities. Such orders shall be deemed to have been issued when they are available to Clearing Members, although they may not in fact have been distributed to such Clearing Members.

Special Clearances and Special Intermediate Clearances

The terms "Special Clearances" and "Special Intermediate Clearances" cover all the operations having to do with special clearances of any contracts, as provided for in Article VIII of the By-Laws, up to and including the issuance of orders by the Corporation directing the receipt and delivery of security balances, or the discontinuance of the Clearance.

Settlement of Contracts

The term "Settlement of Contracts" covers all other ordinary operations to which these Rules are applicable.

Debit Balance

The term "Debit Balance" as used in these Rules in respect to a Clearing Member, Associate Member or Affiliate Member means the amount which the Corporation has paid out or is obligated or may become obligated to pay out for his account pursuant to these Rules and the amounts payable by such Clearing Member, Associate Member or Affiliate Member to the Corporation on account of fines and penalties or for services rendered, less the credits to which such Clearing Member, Associate Member or Affiliate Member has become definitively entitled pursuant to these Rules. The Clearing Member's, Associate Member's or Affiliate Member's contribution to the Clearing Fund and the amount payable to the Clearing Member, Associate Member or Affiliate Member or payable by him under the provisions of the By-Laws relating to the Clearing Fund do not enter into the debit balance.

All Members

The term "All Members" means Clearing Members, Associate Members, Affiliate Members, Non-Clearing Members, Non-Member Banks, and Non-Members of Stock Clearing Corporation.

New York Stock Exchange Guide

SCC Rule 1 § 3301

Extract of Exhibit C

4004

Stock Clearing Corporation--Rules

221 9-72

§ 3301 Continued

Settling Members

The term "Settling Members" means Clearing Members, Associate Members, Affiliate Members, Non-Clearing Members, and Non-Member Banks of Stock Clearing Corporation.

Amendments.

August 24, 1946; March 25, 1947; May 1, 1947; July 18, 1947; August 4, 1948; November 1, 1948; January 14, 1949; March 3, 1952; September 29, 1953; May 1, 1953; February 1, 1954; September 20, 1964; November 24, 1970; November 1, 1971; March 20, 1972.

§ 3302

General Provisions

Cleared Transactions

Rule 2. Sec. 1. Unless it is otherwise stipulated in the bid or offer or the parties otherwise agree, a receive exchange ticket covering the buy side and a deliver exchange ticket covering the sell side of each contract between Clearing Members made on the Exchange calling for delivery of Cleared Securities shall be sent for comparison to the Central Receiving Department of the Corporation; such contracts shall be cleared through the Clearance Department; delivery shall be made through the Central Delivery Department, and payment shall be made through the Settlement Department. Such comparison, clearance, delivery and payment shall be effected as hereinafter prescribed in these Rules or in such regulations with respect thereto as the Corporation may from time to time adopt.

When issued and when distributed cleared transactions shall be settled and payment therefore made at such time, in such manner, and by the delivery of securities and/or other property as the Corporation may determine, or shall be cancelled and thereafter shall be null and void if the Corporation determines that the plan or proposal pursuant to which the securities were to be issued or distributed has been abandoned or materially changed.

The Corporation, notwithstanding anything herein contained, may in its discretion decline to act in respect to any transaction or class of transactions.

Duties of Clearing Members

Sec. 2. Every Clearing Member, Associate Member and Affiliate Member shall maintain an office at a location in the vicinity of the Exchange approved by the Corporation. A Clearing Member, Associate Member or Affiliate Member may use for the purposes hereof the office of another Clearing Member, Associate Member or Affiliate Member, provided such use is pursuant to a written agreement approved by the Corporation.

There shall be present at said office on every business day, between the hours of 9:15 A.M. and 5:30 P.M., and until the Clearing Member's, Associate Member's or Affiliate Member's account is settled and in balance, a representative of the Clearing Member, Associate Member or Affiliate Member authorized in the name of the Clearing Member, Associate Member or Affiliate Member to sign all instruments, to correct errors and to perform such other duties as may be required under these Rules and to transact all business requisite in connection with the operations of the Corporation. If the representative of the Clearing Member, Associate Member or Affiliate Member is not a general partner in the Clearing Member's, Associate Member's or Affiliate Member's firm, or is not an officer of the Clearing Member's,

§ 3302 SUB Dets 2

© 1972, Commerce Clearing House, Inc.

Extract of Exhibit C

221 5-72

Stock Clearing Corporation—Rules

4613

Every broker executing or effecting a sale, delivery or transfer where the taxes are paid through a clearing corporation shall impress by rubber stamp (1) on the certificate of stock or other corporate certificate where such certificate is delivered pursuant to a balance order issued by the clearing corporation, (2) on each page of a copy of the sale contract list and supplemental sale contract list retained by the broker, and (3) on the confirmation notices filed with the clearing corporation, covering sales of cleared securities made with their clearing brokers a certificate in substantially the following form:

New York State and Federal stamp taxes paid through

(Insert name of clearing corporation.)

Member Securities Exchange

44. Non-cleared securities.—In the case of all non-cleared contracts the seller must continue to deliver to the buyer a form of stamp bill on which must appear a rubber stamp imprint regarding the payment of Federal and New York State transfer taxes through the Corporation.

45. Trading on local holidays in New York State.—When the Exchange is open for business on a holiday in New York State, transactions in Cleared Securities made on such day shall be combined with those made on the preceding business day for the purposes of Clearance and Settlement; but each such day shall be treated separately for the purposes of comparison.

§ 3305

Clearance Department

Clearance operation

Rule 5. Sec. 1. The Clearance Department will effect a separate Clearance Operation, based on the data received by it from the Central Receiving Department, for transactions effected on each business day.

Settlement prices

Sec. 2. The Corporation shall establish Settlement Prices for each Clearance Operation.

Clearance cost adjustment

Sec. 3. From the data received from the Central Receiving Department and the established Settlement Prices, the Corporation, through its Clearance Operation, shall, with respect to each Clearing Member, ascertain the debit or credit balance in money, which is the difference between the amounts computed on the basis of the contract prices and the amounts computed on the basis of the Settlement Prices and such charge or credit, as the case may be, such balance to the account of the Clearing Member in the Settlement Department on the day of the settlement for such Clearance Operation; provided, however, the Corporation may at any time, in its discretion, charge or credit to the account of a Clearing Member any balance ascertained.

Balance orders

Sec. 4. From the resultant security balances established through the Clearance Operation, the Clearance Department will prepare and issue to Clearing Members a separate debit or balance order for each delivery of each security to be delivered, showing the Settlement Price established by the Corporation. The Clearance Department will similarly prepare and issue to

New York Stock Exchange Guide

SEC Rule 5 § 3305

Extract of Exhibit C

4014

Stock Clearing Corporation—Rules

271 5-72

§ 3305 Continued

Clearing Members receive balance orders showing the Settlement Price established by the Corporation.

Sec. 5. The Corporation may print, deliver or receive balance orders relating to securities other than Cleared Securities from data supplied by the American Stock Exchange, Inc. Clearing Corporation showing a settlement price established by such clearing corporation.

Amendments

May 1, 1947; July 13, 1947; May 17, 1948; June 21, 1948; September 29, 1952; March 30, 1972.

• • • Supplementary Materials

Explanatory Notes Regarding Clearance Operation

10. Clearance statements.—Following the completion of each Clearance Operation the Clearance Department will issue to each Clearing Member a statement (Form 686 consisting of two parts, each part consisting of two sections, namely: Clearance Statement and Settlement Statement).

The Clearance section of said statement will show as to each Clearing Member the contract values of all transactions in Cleared Securities included in such Clearance Operation and the total amounts to be paid or received upon delivery of the resultant balances of securities computed at Settlement Prices.

The Settlement section of said statement will show as to each Clearing Member the clearance cash adjustment, debit or credit as the case may be.

§ 3306

Central Delivery Department

Clearing Member and Non-Member Bank Division

Rule 6. Sec. 1. The Central Delivery Department will receive envelopes, of the type approved by the Corporation, from Clearing Members, Associate Members, Affiliate Members and Non-Member Banks addressed to Clearing Members, Associate Members, Affiliate Members and Non-Member Banks on business days. Such envelopes will be sorted and made available to the authorized representatives of the Clearing Members, Associate Members, Affiliate Members and Non-Member Banks to whom they are addressed as provided in this section 1.

Deliveries of envelopes (time schedule)

1. Deliveries of envelopes to the Central Delivery Department shall be made in accordance with the following schedule:

Classification of Deliveries	Final Delivery Time	Final Reclamation Time
Non-Member Bank to Clearing Member, Associate Member or Affiliate Member	11:30 A.M.	2:00 P.M.
Clearing Member, Associate Member or Affiliate Member to Clearing Member, Associate Member or Affiliate Member	11:30 A.M.	2:00 P.M.
Clearing Member, Associate Member or Affiliate Member to Non-Member Bank	11:30 A.M.	2:00 P.M.
Non-Member Bank to Non-Member Bank	11:30 A.M.	2:00 P.M.

§ 3306 SEC Rule 6

© 1972, Commerce Clearing House, Inc.

Cont

tam
title
pos

Cred

Cred

Cred

The

ber

mon

Acco

order

rece

Mem

item

item

same

Stap

S

check

enve

prop

the

date

credit

making

been

credit

stamp

to the

Non

the re

Mem

Deliver

6.

the ri

of Cl

Mem

ment

Mem

New

Extract of Exhibit C

221 3-72

Stock Clearing Corporation—Rules

4615

Contents of envelopes

2. An envelope delivered to the Central Delivery Department shall contain only securities; tickets relating to securities contained in the envelope; or tickets covering "transfer as directed" items, or such other items as the Corporation may from time to time permit.

Credit lists

3. The envelopes shall be accompanied by a credit list, in duplicate, in form prescribed by the Corporation. The form of credit list to be used by Clearing Members, Associate Members and Affiliate Members when making deliveries shall be different from that to be used by Non-Member Banks. The credit list shall list each of the envelopes delivered with it and shall show the number of the Clearing Member, Associate Member, Affiliate Member or Non-Member Bank to whom each envelope is addressed and the total money value, if any, of the items contained in that envelope, and each credit list shall be totaled.

Accompanying tickets

4. Each separate item in an envelope shall be accompanied by tickets or orders, in duplicate, containing such information as may be necessary for the receiving Clearing Member, Associate Member, Affiliate Member or Non-Member Bank to identify the item. An envelope containing more than one item must also contain an adding machine tape of the money value of the items included in such envelope. The total shown on such tape must be the same as the money value recorded on the credit list for that envelope.

Stamping of credit lists

5. All envelopes delivered to the Central Delivery Department will be checked against the credit list which accompanies them to see that each envelope on the credit list has been received. If the envelopes delivered are properly listed on the accompanying credit list, the Corporation will stamp the duplicate credit list and make it available to the Clearing Member, Associate Member, Affiliate Member or Non-Member Bank who issued it. Received credit lists will be immediately available to the Non-Member Bank representative making the delivery. All envelopes listed on a credit list shall be deemed to have been accepted by the corporation when the Corporation stamps the duplicate credit list on which such envelopes are listed, and at the time of such stamping the envelope shall be deemed for all purposes to have been delivered to the receiving Clearing Member, Associate Member, Affiliate Member or Non-Member Bank. Prior to the stamping of the credit list envelopes will be held by the Corporation for the delivering Clearing Member, Associate Member, Affiliate Member or Non-Member Bank and after stamping for the receiving Clearing Member, Associate Member, Affiliate Member or Non-Member Bank.

Delivery of envelopes to receiver

6. The Corporation will sort the envelopes accepted by it and, subject to the right of the Corporation to hold property as security for the obligations of Clearing Members, Associate Members, Affiliate Members and Non-Member Banks, will deliver such envelopes at the Central Delivery Department to the authorized representatives of the Clearing Members, Associate Members, Affiliate Members or Non-Member Banks to whom they are ad-

Extract of Exhibit C

4616

Stock Clearing Corporation—Rules

221 5-72

221 5

§ 3306 Continued

addressed. The Corporation will not examine the contents of the envelopes nor verify the amounts of money shown on the credit list, and it shall not be responsible with respect thereto, except to deliver the envelopes accepted by it to the authorized representatives of the Clearing Members, Associate Members, Affiliate Members or Non-Member Banks to whom they are addressed.

Accountancy

7. The Corporation when it stamps a credit list is authorized to, and will, credit the delivering Clearing Member's, Associate Member's, Affiliate Member's or Non-Member Bank's account with the amount shown on such stamped credit list and debit the receiving Clearing Member's, Associate Member's, Affiliate Member's or Non-Member Bank's account with the same amount.

Time schedule

8. Each Clearing Member, Associate Member and Affiliate Member shall send to the Central Delivery Department at frequent intervals and at 11:30 A.M. and 2:00 P.M. on business days a representative authorized, pursuant to Rule 23, to receive envelopes delivered through the Central Delivery Department. Each Non-Member Bank shall send to the Central Delivery Department at frequent intervals and at 11:30 A.M. and 2:00 P.M. on business days, a representative authorized, pursuant to Rule 23, to receive and receipt for envelopes delivered through the Central Delivery Department.

Reclamations

9. In case of any irregularity in an item, the receiving Clearing Member, Associate Member, Affiliate Member or Non-Member Bank may return such item to the delivering Clearing Member, Associate Member, Affiliate Member or Non-Member Bank by putting such item in an envelope and delivering the envelope in the same manner as provided by this Section 1 for the delivery by Clearing Members, Associate Members, Affiliate Members and Non-Member Banks, except that the tickets in the envelope and the credit list accompanying the envelope, which are used in connection therewith, shall bear the legend "RECLAMATION." If such delivery of returned items is to be made through the Corporation it shall be made at Central Delivery Department on the day received in accordance with the schedule contained in Paragraph 1 hereof.

Designated value

10. The Corporation, upon receipt of an envelope addressed to a Non-Member Bank, the total money value of which as listed on the accompanying credit list is of \$100.00 or more, will indicate such amount on the envelope. A Non-Member Bank's authorized representative will be advised, upon appearing at the Central Delivery Department to receive envelopes, of the approximate aggregate value of such envelopes as so indicated.

Lien for debit balance

11. The Corporation shall have a lien for any debit balance due it by a receiving Clearing Member, Associate Member or Affiliate Member on any

13305 SEC Rule 6

© 1972, Commerce Clearing House, Inc.

pro
as a
bers
may
unde

Lien

be i
Me
wh
visi
hav
ent
sam
a C

Cre

Me
acc
An
be
bus
to

Non

bus
tie
Ne
add
Aff
ma
As
ber

Co

tai
ch

Pro

pre
liv
ent
P

Extract of Exhibit C

221 3-22

Stock Clearing Corporation—Rules

4617

property delivered to the Corporation or which may come into its possession as a result of deliveries made by other Clearing Members, Associate Members, Affiliate Members or Non-Member Banks through the Corporation and may exercise in respect thereof all the rights reserved to the Corporation under Rule 13 hereof.

Lien on property

12. The Corporation shall have a lien on any and all property which may be in its possession or under its control from time to time in which a Non-Member Bank has any interest whatsoever, for any and all amounts due or which may become due to it from such Non-Member Bank under the provisions of this Section 1 and with respect to said lien, the Corporation shall have and may exercise any and all rights and remedies to which it would be entitled under its Rules, including, but without limitation, Rule 131, in the same manner and to the same extent as though such Non-Member Bank were a Clearing Member.

Crediting

13. Amounts which the Corporation has agreed to credit to a Clearing Member, Associate Member, Affiliate Member or to a Non-Member Bank on account of deliveries made to other Clearing Members, Associate Members, Affiliate Members or Non-Member Banks, pursuant to this Section 1, shall be credited in the Settlement Department from time to time during each business day and shall be included in the settlement for that day, pursuant to Rule 7.

Non-Member Division

Sec. 2. The Central Delivery Department will, up to 11:30 A.M. on business days, receive sealed envelopes, of a type approved by the Corporation, from Clearing Members, Associate Members, Affiliate Members and Non-Member Banks addressed to Non-Members and from Non-Members addressed to other Non-Members, Clearing Members, Associate Members, Affiliate Members and Non-Member Banks, and will sort such envelopes and make them available to the authorized representatives of Clearing Members, Associate Members, Affiliate Members, Non-Member Banks and Non-Members to whom they are addressed, as provided in this Section 2.

Contents of envelopes

1. An envelope delivered to the Central Delivery Department may contain only securities; tickets relating to securities contained in the envelope; checks; or such other items as the Corporation may from time to time permit.

Prescribed list

2. The envelopes must be accompanied by a list, in duplicate, in form prescribed by the Corporation. The list shall list each of the envelopes delivered with it and shall show the Clearing number of the party to whom each envelope is addressed.

New York Stock Exchange Guide

ECG Rule 6 13105

Extract of Exhibit C

4612

Stock Clearing Corporation—Rules

221 5-72

§ 3205 Continued

Responsibility

3. The Corporation will not examine or verify the contents of the envelopes and it shall not be responsible with respect to such contents, its sole duty being to make the envelopes available to the party to whom they are addressed.

Value of envelopes

4. No envelope delivered to Central Delivery Department pursuant to this Section 2 shall contain securities or other property having aggregate value of more than Fifty Thousand Dollars.

Stamping of lists

5. All envelopes delivered to the Central Delivery Department, as provided in this Section 2, will be checked against the list which accompanies them to verify that each envelope on the list has been received. If the envelopes delivered are properly listed on the accompanying list, the Corporation will stamp the duplicate list and make it available to the Deliverer who issued it. All envelopes listed on such list shall be deemed to have been accepted by the Corporation when the Corporation stamps the duplicate list on which such envelopes are listed. Prior to the stamping of such list the envelopes will be held by the Corporation for the Deliverer. After such stamping, (a) an envelope addressed to a Clearing Member, Associate Member, Affiliate Member or Non-Member Bank shall be deemed for all purposes to have been delivered to such receiving Clearing Member, Associate Member, Affiliate Member or Non-Member Bank and (b) an envelope addressed to a Non-Member will be held by the Corporation for the delivering Clearing Member, Associate Member, Affiliate Member, Non-Member Bank or Non-Member until 11:30 A.M. and thereafter such envelope shall be deemed for all purposes to have been delivered to the receiving Non-Member.

Sorting of envelopes

6. The Corporation will sort the envelopes accepted by it and will make such envelopes available at the Central Delivery Department to authorized representatives of the Receiver to whom the envelopes are addressed.

Time schedules

7. Each Clearing Member, Associate Member, Affiliate Member, Non-Member Bank and Non-Member shall send to the Central Delivery Department at frequent intervals and at 11:30 A.M. on business days, a representative authorized, pursuant to Rule 23, to receive envelopes through Central Delivery Department.

Delivery of payment

8. The Corporation will not act with respect to the settlement for any items delivered pursuant to this Section 2 and has no responsibility whatsoever for the payment of such items. Checks in payment for such items may be placed in envelopes and such envelopes may be delivered to the Central Delivery Department by Clearing Members, Associate Members, Affiliate

§ 3205 SEC Rule 6

© 1972, Commerce Clearing House, Inc.

Extract of Exhibit C

721 5-22

Stock Clearing Corporation—Rules

4 G 1 3

Members, Non-Member Banks and Non-Members in the same manner as a delivery as provided in Section II. After 11:30 A.M. on business days such checks may be delivered through the locked boxes located in the Distributing Department of the Corporation.

Certified checks

9. All checks in the amount of Three Thousand Dollars or more shall be certified before they are delivered to the Central Delivery Department or delivered through the locked boxes located in the Distributing Department, and all checks must be delivered before 2:00 P. M. on business days.

Withdrawal of Corporation

10. The Corporation may, in its discretion, at any time cease to act for a Non-Member, either with respect to a particular transaction or transactions or to transactions generally.

Amendments.

May 1, 1947; July 1, 1948; August 4, 1948; October 24, 1949; September 29, 1952; August 9, 1954; August 12, 1955; November 24, 1970; March 30, 1972.

§ 3307**Settlement Department****Settlement of money payments**

Rule 2. Settlement of Money payments between the Corporation and Settling Members and between Settling Members arising out of or based upon transactions or matters covered by Rules 1, 6, 9, 10, 11, 12, 20, 21 and 22 shall be made through the Settlement Department as provided in this Rule. The Corporation, through the Settlement Department shall debit or credit itself, and Settling Members with the amounts payable and receivable in accordance with the provisions of such Rules.

If at the close of any business day, a balance is due the Corporation from a Settling Member, a check on a bank or trust company in the vicinity of the Exchange, payable through the New York Clearing House Association, drawn to the order of Stock Clearing Corporation for the amount of such balance shall be delivered to the Corporation at the Settlement Department before 3 P. M. on business days. The check shall be certified if for \$5,000 or over, unless it is the check of a bank which is a Non-Member Bank, or unless certification is waived by the corporation in its discretion. If the check is in payment of a balance due by a Clearing Member, or Non-Clearing Member, it shall be a check of a member organization of the Exchange.

If at the close of any business day a balance is due a Settling Member by the Corporation, a memorandum of such balance in such form as the Corporation shall require shall be presented to the Corporation before 3 P. M. on business days. The Corporation shall make available to the Settling Member its check for the amount of such balance at the Settlement Department not later than 3 P. M. on business days.

A Settling Member shall pay Stock Clearing Corporation the whole or any part of his debit balance at any time on its demand. At the request of the Corporation, a Clearing Member, Associate Member, Affiliate Member or

New York Stock Exchange Guide

GCC Rule 7 § 3307

221 5-72

a Non-Clearing Member shall immediately furnish it with such assurances as it shall require of his ability to finance his commitments and shall conform to any conditions which the Corporation deems necessary for its protection, the protection of other Clearing Members, Associate Members and Affiliate Members.

August 4, 1948; September 22, 1952; May 1, 1953; August 9, 1954; November 24, 1970;
November 1, 1971; March 30, 1972.

Explanatory Notes Regarding Settlement Operation

10. Settlement statement.—The Settlement Statement (Form 625), showing the Clearance Cash Adjustment, furnished by the Corporation must be retained in the office of the Clearing Member until the day of the settlement for each such Clearance Operation. On the day of settlement, each Clearing Member shall complete and present to the Settlement Department before 3:00 P. M. Part I of such Settlement Statement showing the amount due to or due from the Corporation as the result of that day's Settlement Operation.

On the day of settlement, each Associate and Affiliate Member shall commence from 9:30 furnished by the Corporation and present to the Settlement Department before 3:00 P.M. Part 1 of such Settlement Statement showing the amount due to or due from the Corporation as the result of that day's Settlement Operation.

March 30, 1972.

1 3308 Failure to Deliver on Security Balance Orders

Rule 8. If a Clearing Member shall not make delivery of all of the Cleared securities to be delivered pursuant to a security balance order by 11:30 A.M. on business days, the Clearing Member to whom the Cleared securities are to be delivered may cause such securities as are not so delivered to be bought in as provided for in the Rules of the Board of Governors of the Exchange.

If a Clearing Member shall refuse to receive all the Cleared securities deliverable to him pursuant to a security balance order and such refusal shall continue up to 11:30 A.M. on business days, the securities the receipt of which is refused may be sold out as provided for in the Rules of the Board of Governors of the Exchange.

If the delivery of Cleared Securities under a securities balance order is not completed by 11:00 A.M. on business days, the parties to sell and receive respectively may enter into a new contract with respect to such transaction, or, if such securities are not bought in or sold out as hereinabove provided, and no such new contract is entered into, such parties shall be deemed to have entered into such a new contract which shall mature on the next business day. In

9 3866 DEC 14 1963

© 1972, Commerce Clearing House, Inc.

of
and
the

227

Lie
Hate
such
part
man
live
be
not
the
the

(6)
Men
party
If such
with th
and the
pertine
the Sta
ized to
same t

Exchange

S:
contrac
one of
macker
shall r
corporat
the Com
and su

New Y.

either case, such parties alone shall be liable on such new contract, and the same shall not be included in any future Clearance Corporation and any delivery and payment pursuant to such new contract shall be effected in the same manner as though the security was a Non-Cleared Security.

Amendments.

January 14, 1949; September 29, 1952; August 12, 1960; November 24, 1970.

§ 3309

Marking to the Market

Exchange contract for the borrowing or loan of securities

Rule 9. Sec. 1. (a) Whenever both parties to an Exchange contract for the borrowing or loan of securities are Clearing Members and one of such parties makes a demand that such contract be marked to the market, pursuant to the Rules of the Board of Governors of the Exchange, he shall notify the other party of such demand by delivering such form as may be prescribed by the Corporation to such other party through the Central Delivery Department up to Final Delivery time on business days, as prescribed by Rule 6. If such other party elects to have the amount so demanded charged to his account with the Corporation, he shall authorize such charge to be made on the form so prescribed. Such charge shall thereupon be effected by the Settlement Department by charging the amount so demanded and authorized to the account of the party from whom it is demanded and crediting the same to the account of the party making the demand.

In case of any irregularity in a Mark to Market, under this Section 1(a), the receiving Clearing Member shall make reclamation against the delivering Clearing Member in the same manner as provided in this Section 1(a) for the delivery of orders to Market between Clearing Members except that the form or ticket shall bear the legend "Reclamation." Deliveries on reclamations may be made at Central Delivery Department not later than thirty minutes after the final time set for making deliveries.

(b) After Final Delivery time as above provided on business days, Clearing Members demanding such mark to market shall deliver to the office of the party upon whom the demand is made forms prescribed by the Corporation. If such party elects to have the amount so demanded charged to his account with the Corporation, he shall authorize such charge on the prescribed form and the form with such authorization shall be presented to the Settlement Department at or before 2:45 P. M. Such charge shall thereupon be effected by the Settlement Department by charging the amount so demanded and authorized to the account of the party from whom it is demanded and crediting the same to the account of the party making the demand.

Exchange contracts other than contracts for the borrowing or loan of securities.

Sec. 2. Whenever both parties to an Exchange contract (other than a contract for the borrowing or loan of securities) are Clearing Members and one of such parties makes a demand that such contract be marked to the market, pursuant to the Rules of the Board of Governors of the Exchange, he shall notify the other party on such forms as may be prescribed by the Corporation. If such other party elects to deposit the difference so demanded with the Corporation, he shall acknowledge the forms received from the first party and such forms shall be delivered in the manner prescribed in such forms to

New York Stock Exchange Guide

SEC Rule 9 § 3309

Extract of Exhibit C

4622

Stock Clearing Corporation—Rules

221 1-72

§ 3309 Continued

the Settlement Department at or before 2:45 P. M. on business days. Thereupon the deposit so demanded shall be effected by the Settlement Department's charging the account of the party from whom it is so demanded. The Corporation shall thereupon deposit the amount so charged in one or more special accounts in its name in banks or trust companies selected by it and all deposits made pursuant to this Section 2 by Clearing Members may be treated by the Corporation as a single fund and may be combined in one or more of such special accounts. All funds deposited in accordance with the foregoing shall be at the risk of the respective parties to the contract so marked.

The Clearing Member in whose favor a deposit with respect to a contract is made may, with the consent of the Corporation, assign such deposit or part thereof to another Clearing Member who assumes such contract for the purpose of marking to the market the identical transaction in question, and any such assignment made with the consent of the Corporation shall thereafter be deemed to be a deposit to the credit of the Clearing Member in whose favor the assignment is made. When either the contract has been consummated or there has been a change in market value reducing the amount of the deposit necessary, the deposit or part thereof shall be returned upon the request of the Clearing Member depositing the same. The Corporation before complying with a request for the return of a deposit or of part thereof may require the consent of the party in whose favor the deposit was made or his assignee or evidence satisfactory to it that the return of the deposit is authorized.

In case of default on an Exchange contract on which such deposit has been made, the Corporation shall apply such deposit, so far as it has not been withdrawn at the time of default, in such manner as in its judgment will protect the party in whose favor it was made or his assignee from any loss by reason of such default and it shall return any balance to the party making the deposit or to his legal representatives.

Amendments.

December 4, 1917; January 14, 1940; September 29, 1952.

§ 3310 Federal and New York State Transfer Taxes

Regulations for Clearing Members

Rule 10. Sec. 1. With respect to such Federal and New York State stock transfer taxes as are or may be payable pursuant to applicable laws and regulations by Clearing Members through the Corporation, each Clearing Member shall on each business day, at or before 10:00 A. M., file with the Settlement Department a report, on such form as may be prescribed by the Corporation, of the amount of such taxes on transactions of such Clearing Member and of others for whom he may be acting, which are due for settlement on that day. If no such taxes are so payable, a report so stating shall be filed at or before the time above provided.

The Settlement Department will debit the account of such Clearing Member with the amounts of taxes payable as shown in such reports and will in accordance with the applicable laws and regulations, remit or pay such amounts to the appropriate tax authorities.

§ 3310 SEC Rule 10

© 1972, Commerce Clearing House, Inc.

1972.

New Y

Extract of Exhibit C

221 3-72

Stock Clearing Corporation—Rules

4623

Applications by Non-Clearing Members to have their names appear on list

SEC. 2. Member Organizations of the Exchange who are not Clearing Members, Associate Members and Affiliate Members may make application to the Corporation to have their names placed upon a list maintained by the Corporation, pursuant to Sec. 3 of Article VI of the By-Laws of the Corporation, of Non-Clearing Members, Associate Members and Affiliate Members for whom the Corporation will act in respect of the payment through the Corporation of Federal and New York State stock transfer taxes, such application to be accompanied by an agreement, in form prescribed by the Corporation, providing for the Corporation's so acting for the applicant in accordance with the provisions of this Rule.

Regulations for Non-Clearing Members

SEC. 3. (a) With respect to such Federal and New York State transfer taxes as are or may be payable pursuant to applicable laws and regulations by Non-Clearing Members, Associate Members and Affiliate Members whose names appear on the list provided for by Sec. 2 of this Rule, each such Non-Clearing Member, Associate Member and Affiliate Member shall at such times as may be prescribed by the Corporation, file with the Settlement Department a report, on such form as may be prescribed by the Corporation, of the amount of such taxes on transactions of such Non-Clearing Member, Associate Member or Affiliate Member other than transactions the taxes on which are included in the report of a Clearing Member as provided in Sec. 1 of this Rule.

(b) Such a Non-Clearing Member, Associate Member or Affiliate Member may authorize a Clearing Member to sign the Non-Clearing Member's, Associate Member's or Affiliate Member's name and to file in his behalf the reports provided for by the foregoing Paragraph (a), and such Clearing Member may authorize the Corporation to debit his account in the Settlement Department with the amount of taxes payable as shown in the reports filed by him on behalf of the Non-Clearing Member, Associate Member or Affiliate Member.

(c) Each report filed by the Non-Clearing Member, Associate Member or Affiliate Member shall be accompanied by a check to the order of the Corporation for the amount of such taxes shown on such report, and each report filed by a Clearing Member in the name of a Non-Clearing Member, Associate Member or Affiliate Member shall be accompanied by such a check, unless the Clearing Member has authorized such amount to be debited to his account with the Corporation.

(d) The Corporation, upon receipt of such checks or upon making such debits to the account of such Clearing Member, will, in accordance with applicable laws and regulations, remit or pay the amounts so received or debited to the appropriate tax authorities.

Method of stamp bill delivery

SEC. 4. The Corporation may, from time to time, prescribe the method by and the manner in which a selling Clearing Member shall deliver a stamp bill to the buying Clearing Member.

Amendments.

December 4, 1947; May 1, 1953; February 1, 1954; November 24, 1970; March 30, 1972.

New York Stock Exchange Guide

SEC Rule 10 13315

Extract of Exhibit C

4024

Stock Clearing Corporation—Rules

221 5-72

§ 3311

Special and Special Intermediate Clearances

Contracts between Clearing Members having to do with securities

Rule 11. Subject to such special rules, regulations and directions as the Corporation may adopt or issue in any particular instance, this Rule shall be applicable to such Special and Special Intermediate Clearances with respect to contracts between Clearing Members having to do with any securities, as the Corporation may from time to time undertake to handle.

Such Special and Special Intermediate Clearances shall be conducted under the following conditions:

Responsibility of original parties

Sec. 1. Responsibility of original parties to cleared contracts shall remain unaffected, except that original parties shall not have the right to have cleared contracts cancelled in market, but parties ordered, as a result of these special intermediate clearances, to deliver and receive balances of securities shall have the right to require that such balances be adjusted to a new delivery price through the Corporation, either through a general adjustment or through separate individual adjustments, at the discretion of the Corporation. Clearing Members may be substituted in these special intermediate clearances at the discretion of the Corporation.

Obligation of participating parties

Sec. 2. Parties by participating in an intermediate clearance shall be obligated to participate in any further intermediate clearance or adjustment of security balances to a new delivery price or final clearance by the Corporation, and the orders to deliver and receive security balances resulting from intermediate clearances shall be entered on the clearing sheets of the parties participating in each subsequent intermediate or final clearance.

Debit and credit cash balances

Sec. 3. Each party having a debit cash balance as a result of an intermediate clearance or an adjustment of security balances to a new delivery price shall make a cash deposit to cover such debit balance, as directed by the Corporation. Such moneys shall be deposited by the Corporation as hereinafter provided and shall be retained by it until there is a subsequent intermediate clearance or adjustment of security balances to a new delivery price, final settlement, discontinuance of the clearance or until the Corporation determines that the plan has been abandoned; in any case, cash so deposited shall be dealt with in accordance with the rights of the parties to the clearance as may be determined by the Corporation. Credit cash balances due to parties to the clearance shall be carried as credits to the parties by the Corporation until there is a further intermediate clearance, adjustment of security balances to a new delivery price, final settlement, discontinuance of the clearance, or until the Corporation determines that the plan has been abandoned.

The Corporation may permit all or part of a Clearing Member's debit cash balance to be evidenced by an open account indebtedness secured by unmatured bearer bonds which are direct obligations of, or obligations guaranteed as to principal and interest by, the United States, or unmatured bearer bonds which

§ 3311 SEC Rule 11

© 1972, Commerce Clearing House, Inc.

are
not
stat
con
de
and
ber
to
sh
as
to
for
cle
by
pro
com

Depo

pure
spec
by it,
there
by it
and
be co

Inter
sent
cuml

Deliv

com
by ti
by ti

Price

at an

Cov

the
insol
judg
shall

A

C

New

Extract of Exhibit C

Stock Clearing Corporation—Rules

4625

are general obligations of, or obligations guaranteed by, a State or political subdivision thereof, which are in the first or second ratings of any nationally known statistical service, having a market value not less than the amount of such open account indebtedness and having maturity dates as the Corporation may determine. Such bonds shall be subject to the Corporation on such terms and conditions as the Corporation may require.

The Corporation may fix the minimum amount of each Clearing Member's debit cash balance which must be deposited in cash and may from time to time increase or diminish such minimum amount. Each Clearing Member shall forthwith pay in cash all or such part of its open account indebtedness as the Corporation may request. The bonds pledged by a Clearing Member to secure its open account indebtedness may be held by the Corporation or for its account by a bank or trust company at the risk of the parties to the clearances. In case of loss of any such bonds, such loss shall be apportioned by the Corporation among the parties to the clearances in such manner and proportion as it shall deem equitable, and any such apportionment shall be conclusive on all parties to the clearances.

Deposits received by Corporation

Sec. 4. The approximate amount of deposits received by the Corporation pursuant hereto shall be deposited by the Corporation in a special account or special accounts in its name in one or more banks or trust companies selected by it, but shall be at the risk of the parties to the clearances. In case of loss through insolvency of a depository or otherwise such loss shall be apportioned by the Corporation among such parties to the clearances in such manner and proportion as it shall deem equitable, and any such apportionment shall be conclusive on all parties to the clearances.

Interests in cash deposits and pledged securities

Sec. 5. No party to such a clearance shall, without the prior written consent of the Corporation, sell, assign, transfer or in any manner pledge or encumber his interest in any such cash deposit or pledged securities.

Delivery of securities

Sec. 6. If the delivery of securities under a security balance order is not completed by delivery time limit, on a date subsequently to be determined by the Corporation, the failure to deliver shall be subject to and governed by the provisions of Rule 8.

Discontinue clearances

Sec. 7. The Corporation, at its discretion, may discontinue any clearance at any time.

Governing rules

Sec. 8. The same rules and principles, so far as applicable, shall govern the special clearance, including matters connected therewith arising out of the insolvency of a party thereto, as in the case of a regular clearance; and the judgment of the Corporation as to the applicability of such rules and principles shall be conclusive on all parties concerned in all respects.

Amendments.

October 5, 1959, effective October 9, 1959; May 23, 1960.

New York Stock Exchange Guide

SEC Rule 11 46311

Extract of Exhibit C

4520

Stock Clearing Corporation—Rules

221 5-72

221 5-72

§ 3312

Settlement of Commissions

§ 3312

Regulations on Commissions

Rule 12. All payments of commissions due on business when a principal is given up between Clearing Members and Non-Clearing Members shall be settled monthly as follows:

(1) Each Payee shall make up bills in the customary form for all commissions due on business when a principal is given up and shall make out and sign a ticket, in form prescribed by the Corporation, showing the total amount due from and the name of each Payer.

(2) Each Payee shall deliver such ticket with the customary commission bill to each Payer on or before the 5th day of each month if a business day, otherwise the next succeeding business day.

(3) Each Payer shall promptly verify such bill and shall not later than 12 noon on the 10th day of each month, if a business day; otherwise on the next succeeding business day, deliver such tickets to the Settlement Department accompanied by such forms as the Corporation may prescribe.

(4) The Corporation shall upon completion of the clearance of such tickets, debit and credit the respective Payers and Payees with resulting amounts plus or minus the charges for services rendered for which provision is made in Rule 20.

If, as a result of such clearance of commissions, a Non-Clearing Member shall be indebted to the Corporation, such Non-Clearing Member shall pay the amount due to the Corporation through the Settlement Department on or before the settlement day of each month, as determined by the Corporation. If such Non-Clearing Member shall be entitled to a credit, the Corporation will pay the same by check deliverable through the Settlement Department as soon as practicable.

If, as a result of such clearance of commissions, a Clearing Member shall be indebted to the Corporation or entitled to a credit, such debits and credits shall be included in the final settlement of the accounts of such Clearing Member in the Settlement Department for such day as the Corporation may determine.

The Board of Directors of the Corporation shall have power to determine the amounts received by it in the settlement of commissions and the persons entitled thereto and any determination so made shall be final and conclusive upon all parties to the settlement.

In case any commissions on business when a principal is given up shall be due to or from a member organization of the Exchange who is not a Clearing or Non-Clearing Member, all such commissions shall be paid or collected through a Clearing Member or a Non-Clearing Member.

Amendments.

January 11, 1949; May 1, 1953; February 1, 1954.

§ 3312 SEC Rule 12

© 1972, Commerce Clearing House, Inc.

General
Rule 12

the ac-
all ac-
Clear-
or Re-
ment
account
demon-
of cer-
other
prop-
ber, A-
Ac-
10, or
demon-
Cor-
for in-
coll-
secu-
may be
and
noted
side
market,
its own

The
of the
since
Mem-
Ar-
Jan-
1954

§ 3312

Ref-
Febr-
Rule 12

either
action
or A-
it will
and
Ad-
and
pend-
it-
New

Extract of Exhibit C

221 5-22

Stock Clearing Corporation—Rules

4627

§ 3313 Rights of the Corporation in Respect to Securities and Other Property Held

Lien on securities or property

Rule 13. The Corporation shall have a lien on any and all securities and other property held by it at any time or from time to time for the account of a Clearing Member, Associate Member or Affiliate Member for all amounts due or which may from time to time become due to it from said Clearing Member, Associate Member or Affiliate Member under its By-Laws or Rules. It shall have the right to sell, lease, convey and pledge for the repayment thereof all or any part of the securities or other property held by it for account of a Clearing Member, Associate Member or Affiliate Member either alone or together with securities and other property held by it for account of other Clearing Members, Associate Members and Affiliate Members or otherwise and whether or not the amounts for which such securities or other property are so held shall exceed the net balance of the Clearing Member, Associate Member or Affiliate Member. In case a Clearing Member, Associate Member or Affiliate Member is a corporation, as defined in Rule 16, or shall fail to pay its debt or claims by the time provided under the Rules or on demand, or in case the securities and other property so held for its account by the Corporation shall be in its opinion insufficient to secure such debt or security for his obligations, or he shall fail on demand to furnish additional collateral, the Corporation may, in its discretion, cause all or any of the securities or other property held by it for his account to be sold. Such sale may be made on the Exchange or on any other available market or at public auction or at private sale and may be made without further demand or notice to the Clearing Member, Associate Member or Affiliate Member. If the sale is made on the Exchange or at any other exchange, or in the over-the-counter market, or if the sale is at public auction, the Corporation may purchase for its own account for securities or other property sold.

The proceeds of sale shall be applied by the Corporation to the payment of the Clearing Member's, Associate Member's or Affiliate Member's debit balance and any surplus shall be paid over to the Clearing Member, Associate Member or Affiliate Member to his representative.

Amendments

January 14, 1941; August 2, 1954; November 21, 1970; March 20, 1972.

§ 3314 When the Corporation Declines to Act for a Clearing Member Other than in Cases of Insolvency

Refusal to act for Member Responsibility of Corporation

Rule 14. Sec. 1. The Corporation may, in its discretion, at any time cease to act for a Clearing Member, Associate Member or Affiliate Member either with respect to a particular transaction or transactions or to transactions generally. When it ceases to act for a Clearing Member, Associate Member or Affiliate Member with respect to a particular transaction or transactions, it will notify such Clearing Member, Associate Member or Affiliate Member and such other Clearing Members, Non-Clearing Members, Associate Members, Affiliate Members, Non-Member Banks and Non-Members as it deems proper and will determine what steps are to be taken in the completion operation, pending Clearance Operation, Settlement or other transactions, in view of its so ceasing to act for such Clearing Member, Associate Member or Affili-

Clearing, Inc.

New York Stock Exchange Guide

SECURITY 10 § 3314

Extract of Exhibit C

4028

Stock Clearing Corporation—Rules

221 3-72

§ 3314 Continued

late Member. When the Corporation ceases to act for a Clearing Member, Associate Member or Affiliate Member in transactions generally, it will notify such Clearing Member, Associate Member or Affiliate Member, other Clearing Members, Associate Members, Affiliate Members, Non-Clearing Members, Non-Member Banks and Non-Members. The notice that it has ceased to act for a Clearing Member given by the Corporation shall state in general terms how pending transactions will be affected.

Notice given before issuance of security balance orders

Sec. 2. (a) If notice that the Corporation is ceasing to act for a Clearing Member in transactions generally, is given before the security balance orders in a pending Clearance Operation have been issued, the Corporation may, in its discretion, either eliminate from the comparison operation, or such Clearance Operation, or both, all transactions to which the Clearing Member to whom such notice is applicable is a party, or the Corporation may complete either, or both, of such operations, as though no such notice had been given. If the Corporation eliminates such transactions from the comparison operation, the exchange tickets covering such transactions shall be made available for return to the Clearing Member from whom they were received and such transactions shall be compared as provided by the Rules of the Board of Governors of the Exchange. If the Corporation eliminates such transactions from the Clearance Operation, such transactions shall be settled between such Clearing Member and the other parties to the contracts and not through the Corporation. If the Corporation determines to complete the pending Clearance Operation, security balance orders shall be issued by the Clearance Department as though no such notice had been given and deliveries pursuant to such orders and payments for securities delivered thereon shall be governed by the provisions of Section 3 of this Rule.

Notice given after issuance of security balance orders

(b) If the notice that the Corporation has ceased to act is given after the security balance orders have been issued, deliveries pursuant to such orders and payment for securities delivered thereon shall be governed by the provisions of Section 3 of this Rule.

Method of obtaining payment

Sec. 3. (a) After the Corporation has ceased to act for a Clearing Member, Associate Member or Affiliate Member generally, it may accept from him envelopes to be delivered to other Clearing Members, Associate Members and Affiliate Members (whether such deliveries are pursuant to security balance orders issued by the Corporation or are otherwise provided for in the Rules) or it may decline to accept any such deliveries, in which case such Clearing Member, Associate Member or Affiliate Member may make such deliveries and obtain payment therefor as provided in the Rules of the Board of Governors of the Exchange, the Rules of the Board of Governors of the American Stock Exchange, Inc., if applicable, and if not governed by any of those rules, then as may otherwise be determined.

(b) After the Corporation has ceased to act for a Clearing Member, Associate Member or Affiliate Member generally, it shall decline to accept from other Clearing Members, Associate Members or Affiliate Members or from Non-Member Banks and Non-Member Banks envelopes or orders to

§ 3314 600 Rules 14

© 1972, Connors Clearing House, Inc.

Right

Assoc

or the

right

Member

Clearing

Sec

financed

§ 3314

Clearing

Rules 14

member

pending

upon re

or corpo

subject

In

which i

of a me

not cer

form or

Exchange

stitution

poration

any the

any ter

though

when re

New Yo

Extract of Exhibit C

221 5-72

Stock Clearing Corporation—Rules

4629

be delivered to such Clearing Member, Associate Member or Affiliate Member, in which case such other Clearing Members, Associate Members, Affiliate Members, Non-Members and Non-Member Banks may make such deliveries to such Clearing Member, Associate Member or Affiliate Member and obtain payment therefor as provided for in the Rules of the Board of Governors of the Exchange, the Rules of the Board of Governors of the American Stock Exchange, if applicable, and if not governed by any of those Rules, as may be otherwise determined between such Clearing Members, Associate Members, Affiliate Members, Non-Member Banks and Non-Members respectively and such Clearing Member, Associate Member or Affiliate Member.

Rights or Remedies of Corporation

SEC. 4. After the Corporation has ceased to act for a Clearing Member, Associate Member or Affiliate Member either in respect to a particular transaction or transactions generally, the Corporation shall nevertheless have the same rights and remedies in respect to any debit balance due from such Clearing Member, Associate Member or Affiliate Member or any liability incurred on his behalf as though it had not ceased to act for him.

Clearing member insolvency

SEC. 5. The provisions of this Rule shall not apply in a case where a Clearing Member, Associate Member or Affiliate Member is insolvent, as defined in Rule 14, and in such cases the provisions of such Rule 14 shall govern.

Amendments

July 18, 1947; January 14, 1949; November 24, 1970; March 30, 1972.

§ 3315 Death, Expulsion or Suspension (Other than for Insolvency) of Sole Exchange Member of a Clearing Member Firm or Member Corporation

Clearing Member status

Rule 15. If the sole Exchange Member of a member firm which is a Clearing Member or the sole Exchange Member who is a director of a member corporation which is a Clearing Member, dies, or is expelled or suspended by the Exchange, other than for insolvency, the Corporation shall, upon receipt of notice thereof, cease to act for such Clearing Member, firm or corporation with respect to transactions generally, as provided in Rule 14, subject, however, to the provisions of the next paragraph of this Rule.

In the case of the death of the sole Exchange Member of a member firm which is a Clearing Member or the sole Exchange Member who is a director of a member corporation which is a Clearing Member, the Corporation shall not cease to act for such firm or corporation if and for so long as such member firm or member corporation is permitted by the Board of Directors of the Exchange, pursuant to the provisions of Section 15 of Article IX of the Constitution of the Exchange, to have the status of a member firm or member corporation; subject, however, to the right of the Corporation to cease to act at any time as provided in Rule 14. The Corporation shall so cease to act upon any termination of such status in the same manner and to the same extent as though the death of such sole Exchange member had occurred at the time when such termination becomes effective.

New York Stock Exchange Guide

SEC Rule 15 § 3315

Extract of Exhibit C

1634

Stock Clearing Corporation—Rules

221 5-72

§ 3319

Action by the Corporation

Officers who may act for Corporation

Rule 19. Except where action of the Board of Directors is specifically required by the Rules, the Corporation may act by its President or Vice President or by such other person as may be designated by the Board of Directors from time to time.

§ 3320

Charges for Services Rendered

Charges to Clearing Members

Rule 20. Sec 1. (a) Each Clearing Member, each Associate Member and each Affiliate Member shall pay a basic service charge at the rate of \$10.00 per month.

(b)(1) For every ten shares of stock recorded on each purchase and sales contract list 3/10ths of one cent where a Clearing Member submits to the Corporation pre-punched tabulating machine cards or magnetic tape in form acceptable to and approved by the Corporation.

(ii) Where a Clearing Member does not submit to the Corporation pre-punched tabulating machine cards or magnetic tape in form acceptable to and approved by the Corporation, 5/10ths of one cent for every ten shares of stock recorded in each purchase and sales contract list.

(iii) For every \$1,000 par value of bonds recorded in each purchase and sales contract list, two cents.

(c) For every ten shares of stock to be received and delivered as shown by the security balance orders issued by the Corporation 1/10th of one cent, for every \$1,000 par value of bonds two cents.

(d)(1) For each Clearing Member, Associate Member, Affiliate Member and Non-Member Bank delivery envelope received through the Central Delivery Department five cents.

(2) For each Clearing Member, Associate Member, Affiliate Member and Non-Member Bank delivery envelope delivered through the Central Delivery Department:

(i) up to 9:15 A.M. no charge.

(ii) between 9:16 A.M. and 11:00 A.M. a charge of 5 cents.

(iii) between 11:01 A.M. and 11:20 A.M. a charge of \$1.00.

(3) The charge for a reclamation envelope between 11:01 A.M. and 2:00 P.M. will be 5 cents.

(e) For each Non-Member delivery envelope received and delivered through the Central Delivery Department three cents.

(f) For each mark to market debited or credited to his account five cents.

(g) For conducting special and special intermediate clearances

(1) For every ten shares of stock to be cleared on deliver, exchange tickets, receive exchange tickets, and for every ten shares of stock on balances to receive and balances to deliver resulting from final clearance, 3/10ths of one cent.

(2) For every \$1,000 par value of bonds to be cleared on deliver exchange tickets, receive exchange tickets, and for every \$1,000 par value of bonds on balances to receive and balances to deliver resulting from final clearance, two cents.

§ 3319 SEC Rules 19

© 1972, Commerce Clearing House, Inc.

the
two
this
the
the
ber, M
grah
ing M
such a
\$10.00
month
(i)
the s
Part
excess
nine
Charg
\$
per m
(i)
stock
(c)
two ce
Charg
Sec
\$25.00
(b)
receiv
For
deliver
between
and 11
between
(c)
through
Charg
Sec
\$15.00
(b)
through
New Yor

Extract of Exhibit C

221 5-72

Stock Clearing Corporation—Rules

4633

(h) For each Commission Bill ticket debited or credited to his account, two cents.

(i) Notwithstanding the provisions of Paragraphs (a) to (g), inclusive, of this Section 1:

(1) if the aggregate of the charges for such calendar month due by such Clearing Member, Associate Member, or Affiliate Member pursuant to Paragraphs (a) to (g), other than Paragraph (d)(2)(iii), shall be less than a sum computed on the basis of two dollars and fifty cents for each \$100,000.00 (or fraction thereof) of such Clearing Member's, Associate Member's or Affiliate Member's aggregate debits and credits,

then, in lieu of the charges imposed for such month on such Clearing Member, Associate Member, or Affiliate Member by the provisions of said Paragraphs (a) to (g), inclusive, other than Paragraph (d)(2)(iii), such Clearing Member, Associate Member, or Affiliate Member shall pay a charge for such month computed on the basis of two dollars and fifty cents for each \$100,000.00 or fraction thereof of his aggregate debits and credits in such month.

(j) In cases of Cleared Securities consisting of rights or warrants, where the selling price is less than \$1.00 per right or warrant, the charges under Paragraphs (a), (c), and (e)(1) of this Section 1 shall be at such rates (not in excess of the rates specified in such paragraphs) as the Corporation may determine in each case, in lieu of the rates specified in such paragraphs.

Charges to Non-Clearing Members

SEC. 2. (a) For the use of Distributing Department boxes, five dollars per month, payable annually.

(b) For services rendered in payment of Federal and New York State stock transfer taxes, five dollars per month, payable annually.

(c) For each Commission Bill ticket debited or credited to his account two cents.

Charges to Non-Member Banks

SEC. 3. (a) Basic service charge for each month or any part thereof \$25.00.

(b) For each Clearing Member and Non-Member Bank delivery envelope received through the Central Delivery Department, five cents.

For each Clearing Member and Non-Member Bank delivery envelope delivered through the Central Delivery Department up to 9:15 A.M. no charge, between 9:16 A.M. and 11:00 A.M. a charge of five cents, between 11:01 A.M. and 11:59 A.M. a charge of \$1.00. The charge for a reclamation envelope between 11:01 A.M. and 2:00 P.M. will be five cents.

(c) For each Non-Member delivery envelope received and delivered through the Central Delivery Department, three cents.

Charges to Non-Members

SEC. 4. (a) Basic service charge for each month or any part thereof, \$15.00.

(b) For each Non-Member delivery envelope received and delivered through the Central Delivery Department, three cents.

New York Stock Exchange Guide

SEC Rule 20 90220

Extract of Exhibit C

4635

Stock Clearing Corporation—Rules

221 5-72

§ 3320 Continued

Charge for unusual expenses

Sec. 5. A Clearing Member, Associate Member, Affiliate Member or a Non-Clearing Member may be charged for any unusual expenses caused directly or indirectly by such Clearing Member, Associate Member, Affiliate Member or Non-Clearing Member, including but without limitation, the cost of producing records pursuant to a court order, or other legal process in any litigation or other legal proceeding to which such Clearing Member, Associate Member, Affiliate Member or Non-Clearing Member is a party or in which such records relating to such Clearing Member, Associate Member, Affiliate Member or Non-Clearing Member are so required to be produced, whether such production is required at the instance of such Clearing Member, Associate Member, Affiliate Member, Non-Clearing Member, or of any other party.

Amendments.

January 14, 1957; May 2, 1959; June 1, 1959; February 1, 1954; August 9, 1954; July 15, 1955; August 12, 1959; August 27, 1959; November 24, 1970; November 1, 1971; March 30, 1972.

• • • Supplementary Materials:

10 "Ten shares of stock."—For the purposes of Paragraphs (b), (c) and (d)(1) of Sec. 4, above, the term "ten shares of stock" shall be deemed to include ten rights or similar securities other than stock.

§ 3321

Fines

Imposition of fines

Rule 21. The Corporation may impose a fine on a Clearing Member, Associate Member, Affiliate Member or a Non-Clearing Member for a violation of the Rules or for errors, delays, or other conduct embarrassing the operations of the Corporation, or for not providing adequate facilities for his transactions with the Corporation, provided, however, that no fine for any given offense shall exceed the sum of \$250.00.

Such fine may be imposed and the amount thereof fixed by the President or Vice President of the Corporation, provided, however, that a Clearing Member, Associate Member, Affiliate Member or Non-Clearing Member on whom a fine has been so imposed may within two business days after its imposition request that the matter be reviewed by the Board of Directors, which, if requested, shall give such Clearing, Associate, Affiliate or Non-Clearing Member a hearing and shall render a decision thereon which shall be final and conclusive. The Board of Directors may, whether or not a review is requested, reduce or remit a fine imposed by the President or Vice President.

Amendment.

November 24, 1970; March 30, 1972.

§ 3322

Bills Rendered

Submission of bills

Rule 22. The Corporation will render bills to Clearing Members, Non-Member Banks, Associate Members and Affiliate Members for charges on account of the business of any month and for fines imposed during any month on or before the tenth day of the succeeding month and will charge the accounts of Clearing Members, Non-Member Banks, Associate Members and Affiliate Members with the amounts thereof on or before each tenth day.

§ 3321 SOCE Rule 21

© 1972, Commerce Clearing House, Inc.

Extract of Exhibit C

221 5-22

Stock Clearing Corporation—Rules

4037

The Corporation will render such bills to Non-Clearing Members on or before the tenth day of such succeeding month and such bills shall be paid within ten days after such bills are rendered.

Such bills to Clearing and Non-Clearing Members shall not include the charges for settlement of commissions specified in Paragraph (1), Section 1, and Paragraph (c), Section 2, of Rule 20, for the payment of which charges provision is made in Rule 12.

Amendments.

January 14, 1949; November 24, 1970; March 30, 1972.

§ 3323 Admission to Premises of the Corporation— Powers of Attorney, etc.

Presentation of credentials

Rule 23. No person will be permitted to enter the premises of the Corporation as the representative of Any Member unless he has first been approved by the Corporation and has been issued such credentials as the Corporation may from time to time prescribe, and such credentials have not been cancelled or revoked. Such credentials must be shown on demand, and may limit the portions of the premises to which access is permitted thereunder. Any credentials issued pursuant to this Rule may be revoked at any time by the Corporation in its discretion, and prompt notice of such revocation shall be given to the employer of the person whose credentials have been so revoked.

Every person to whom, as the representative of a Clearing Member, Associate Member, Affiliate Member, Non-Member Bank or Non-Member, credentials have been or may hereafter be issued by the Corporation authorizing such person to pass over, during the hours when securities or envelopes are to be received and delivered, to the portion of the Corporation's premises in which the Central Delivery Department is located, shall be deemed to have been authorized to accept Clearing Member, Associate Member, Affiliate Member, Non-Member Bank or Non-Member to receive and deliver securities or envelopes in behalf of said Clearing Member, Associate Member, Affiliate Member, Non-Member Bank or Non-Member.

All Members shall, if any person in their employ to whom any credentials have been issued pursuant to this Rule or to whom a power of attorney or other authorization has been given to act for them in connection with the work of the Corporation shall for any reason cease to be so employed, give to the Corporation immediate notice in writing of such termination of employment, and if any such power of attorney or other authorization is otherwise revoked or annulled, shall likewise give to the Corporation immediate notice in writing of such revocation or cancellation. All credentials issued pursuant to this Rule shall be immediately surrendered to the Corporation upon their revocation by the Corporation or by the employer or upon the termination of the employment of the holder thereof.

Unless revoked by the Corporation, all credentials, authorizations, and powers of attorney issued pursuant to this Rule or in connection with the work of the Corporation shall remain in full force and effect until the Corporation shall have received written notice of the revocation thereof or of the termination of the holder's employment.

Amendments.

August 4, 1949; January 14, 1949; May 1, 1953; August 2, 1954; November 24, 1970; March 30, 1972.

New York Stock Exchange Guide

SSE Rule 23 § 3323

EXHIBIT D

<u>Item</u>	<u>Description</u>	<u>Amount</u>	<u>Category</u>
1.	1 Wean United Inc. Bond	\$ 461.00	1
2.	200 shares Elgin National Industries Inc.	800.00	1
3.	20 Memorex Bonds	2,951.67	1
4.	100 shares Johns Manville Corporation	2,100.00	1
5.	19000 MGM Bonds	11,590.00	1
.	200 Chrysler Corp. Purchase Warrants	2,600.00	1
7.	21 shares A.M.P. Incorporated	2,522.63	1
	10 shares Campbell Red Lake Mines, Ltd.	636.25	1
8.	5000 Pan Am Bonds	2,570.00	1
9.	200 shares Beneficial Corp.	14,000.00	1
10.	200 shares B.F. Goodrich Corp.	4,600.00	1
11.	16000 N.J. Bell Tel. Bonds	18,784.00	1
12.	140 shares General Electric Corp.	8,098.37	4B
	800 shares General Electric Corp.	46,298.02	4B
13.	8000 Zurn Industries Bonds	6,971.42	3
14.	1000 Ford Motor Credit Debenture	797.00	1
	1 share Wilson Sporting Goods	14.04	9
15.	3000 Potomac Electric Power Bonds	3,417.00	1
16.	100 shares Natomas Company	4,300.00	1
17.	100 shares Atlantic Richfield	8,000.00	1
18.	200 shares SCA Services	2,000.00	1
19.	NYSHFA)		
	NYS Dorm. Auth.)	13,089.00	6A
	1 share Braniff Airways	2,197.23	6B
	100 shares Gulf & Western	2,300.00	1
20.	100 shares Transamerica Income Shares	2,100.00	1
21.	100 shares Duquesne Light Co.	2,300.00	1
	400 shares Northwest Airlines	9,600.00	1

Exhibit D

<u>Item</u>	<u>Description</u>	<u>Amount</u>	<u>Category</u>
22.	10000 Arlan Dept. Store Bonds	3,100.00	1
23.	300 Wts. Greyhound	1,725.00	1
	10000 First National City Notes	22,192.22	2
24.	2000 shares Franklin Stores	60,000.00	1
25.	13 shares Continental Tel	290.00	8
	450 shares American LaFrance	3,200.00	8
	150 shares Photon	575.00	8
	150 shares Photon	450.00	1
26.	100 shares Beatrice Foods Co.	200.00	5
	200 shares Eli Lilly	800.00	5
	200 shares Eli Lilly	1,200.00	5
	100 shares Marshall Foods	100.00	5
	200 J.C. Penney	2,200.00	5
27.	5 Federal National Mtg. Bonds	4,290.00	1
28.	24000 Western Airlines Bonds	21,888.00	1
29.	300 shares Ponderosa Systems	2,100.00	5
30.	200 shares Ryerson & Haynes, Inc.	800.00	1
31.	100 shares Utah Idaho Sugar Co.	900.00	3
32.	100 shares AVCO Corporation	3,900.00	1
33.	200 shares Husky Oil Ltd.	4,000.00	3
	800 shares Husky Oil Ltd.	16,800.00	3
	200 shares International Tel. & Tel.	12,400.00	6B
34.	900 shares Continental Mtg. Investors	9,000.00	3
	100 shares Continental Mtg. Investors	1,000.00	3
	100 shares Husky Oil Ltd.	2,100.00	3
35.	100 shares Con Ed	6,400.00	1
	200 shares Hartz Mountain Pet Foods	1,000.00	6B
	1500 shares Communications Satellite	69,000.00	3
	200 shares Communications Satellite	9,600.00	3
36.	600 shares Franklin Stores Corp.	18,000.00	1
37.	200 shares Community Health Corp.)		
	200 shares Equity Funding Corp.)		
	300 shares Gulf Oil Corp.)	20.00	4A
	315 shares Lane Wood Inc.)		
	2000 shares Coliseum Properties)		
	400 shares Litton Industries	7,200.00	1

A-64
Exhibit D

Item	Description	Amount	Category
38.	5 Dillingham Corp. Bonds	3,065.00	1
	100 shares Marion Laboratories	2,700.00	1
	400 shares National Airlines	6,000.00	1
39.	100 shares Levitz Furniture Corp.	700.00	1
40.	160000 National Equipment Rental) Bonds)		
	22000 National Health Enterprises)	60,500.00	4A
	Bonds)		
	1600 shares Atlantic Industries)		
	181000 shares Diversified)	101,200.00	6A
	Industries)		
	1000 Goodrich Realty & Developers)		
	Bonds)	38,000.00	4A
	3400 shares Franklin Stores Corp.	86,600.00	4A
	500 shares Aetna Life &)		
	Casualty Co.)	119,600.00	4A
41.	1600 shares Fairchild Camera)		
	& Instrument)	70,400.00	1
42.	5000 Western Airlines Bonds	4,560.00	1
43.	2000 Mobil Oil Bonds	124,000.00	1
44.	200 Uniroyal Bonds	1,570.00	1
	1 Pan Am World Bond	1,095.00	1
45.	200 shares KLM Royal Dutch)		
	Airlines)	7,200.00	3
	1900 shares Matsushita Electric)		
	Industrial)	53,200.00	3
46.	15000 LA County Calif. Flood)		
	Control Bonds)	14,778.63	1
47.	100 shares Mt. Fuel Supply	7,587.50	1
	200 shares Mt. Fuel Supply	16,100.00	6B
	100 shares Mt. Fuel Supply	7,962.50	6B
	100 shares Mt. Fuel Supply	7,962.50	6B
48.	100 shares Dome Mines	9,400.00	1
	100 shares Dome Mines	9,300.00	1
49.	5 Gulf Resources Bonds	3,945.00	1
	100 shares Western Airlines	1,000.00	3
50.	100 shares Columbia Pictures)		
	Industries Inc.)	500.00	1
51.	45 Bonds Western Airlines	40,995.00	1
52.	3 Bonds Tesoro Petroleum	3,228.00	1

Exhibit D

<u>Item</u>	<u>Description</u>	<u>Amount</u>	<u>Category</u>
53.	100 shares Warner Communications Inc.	500.00	5
	100 AVCO Wts.	200.00	3
	100 shares Intl. Nickel	2,700.00	3
	100 shares Roan Selection Trust	600.00	3
	100 shares Ogden Corp.	2,900.00	3
54.	4500 First National City Bank Notes	9,500.13	2
55.	100 shares Dupont	5,300.00	3
56.	100 shares Heublein	4,300.00	3
57.	800 shares NLT Corp.	19,200.00	7
	100 shares Automatic Data Processing Inc.	9,200.00	6A
58.	1300 shares Textron	2,600.00	5
	1000 shares Brown	1,000.00	5
	600 shares Reserve Oil & Gas	1,800.00	5
	200 USM Corp. Stamp	1,000.00	5
59.	900 shares Textron	7,200.00	5
60.	1300 shares Seatrains Lines	2,600.00	1
61.	100 shares Campbell Red Lake Mines	7,087.50	1
62.	300 shares General Host Corp.	3,900.00	3
	100 shares General Host Corp.	1,300.00	3
63.	100 shares Eastm Kodak	12,600.00	3
	2000 Applied Digital Data	FREE	
64.	15000 CENCO Instruments Bonds	12,150.00	1
	14000 Continental Tel. Notes	15,022.00	1
	100 shares Gen. Instrument	2,337.50	1
	100 shares Gen. Instrument	2,275.00	1
66.	300 shares Kroger	4,800.00	3
	2000 S.S. Kresge	72,000.00	3
	500 shares Gen. Motors	34,000.00	3
	2800 shares Gen. Host	16,800.00	5
	200 shares Consumers Power Co.	5,400.00	1
	2500 Wts. Chrysler Corp.	27,500.00	3
	2800 shares Gen. Host Corp.	30,800.00	3
67.	500 shares ASA Ltd.	40,000.00	1
68.	200 shares Franklin Stores	6,600.00	1
69.	200 Mutual of Omaha International Shares	3,400.00	1
70.	100 Transworld Airline Wts.	1,875.00	1
71.	90 shares USM Corp.	1,620.00	1

Exhibit D

<u>Item</u>	<u>Description</u>	<u>Amount</u>	<u>Category</u>
72.	40 North American Mortgage Investors Bonds	34,400.00	1
73.	10 shares Public Service Electric & Gas Co.	540.00	1
74.	1000 shares National Airlines	15,000.00	1
75.	400 shares Texas Instruments Inc.	5,200.00	5
76.	5600 shares Warner Communications Inc.	104,629.28	4B
	6300 shares Warner Communications Inc.	112,580.22	4B
		<u>\$1,909,093.66</u>	

Exhibit DNOTES TO EXHIBIT D

1. Of the items listed above, the following were received by SCC for delivery to Weis at the times indicated below on May 24, 1973 and, hence, were picked up by Weis some time thereafter:

<u>Item</u>	<u>Time</u>	<u>Amount</u>
26. (all entries)	1:35 P.M.	\$ 4,500
33. (top 2 entries)	1:27 P.M.	20,800
62. (all entries)	1:39 P.M.	5,200
66. (bottom entry)	1:50 P.M.	<u>30,800</u>
		<u>\$61,300</u>

The times are based upon the books and records of SCC.

2. In the case of Item 40, the certificates for 500 shares of Aetna Life & Casualty Co. (\$119,600) were transferred to Weis through the facilities of The Depository Trust Company on May 24, 1973 and the corresponding payment was processed through SCC.

3. In the case of Item 76, 6,000 shares from the total received were redelivered out of Weis on May 24, 1973 through SCC and included in the computation of the deliveries made by Weis. Upon redelivery out, these shares had a dollar amount computed in accordance with the Applicable Rules of \$104,000.

EXHIBIT E

<u>Category Number</u>	<u>Title and Definition</u>	<u>Amount</u>
1.	PURCHASES FOR CUSTOMERS	\$680,313.73
	Securities received by Weis in respect of the settlement of contracts for the purchase of securities effected by Weis for accounts of its customers.	
2.	PRINCIPAL PURCHASES	31,692.35
	Securities received by Weis in respect of the settlement of contracts for the purchase of securities effected by Weis for its own account.	
3.	RETURN OF STOCK BORROWED	383,671.42
	Securities received by Weis as a return of stock borrowed from Weis by the deliverers. [When securities are borrowed, the borrower pays the lender an amount equal to the then current market price of the borrowed securities which amount is referred to as the "Contract Price". While the loan remains outstanding the Contract Price may be adjusted from time to time to the current market price of the borrowed securities. If the market price declines after the loan date, the borrower may deliver a "mark-to-market" to the lender requiring the lender to pay to the borrower an amount equal to the Contract Price less the current market value or, if the market price rises after the loan date, the lender may deliver a mark-to-market to the borrower requiring the borrower to pay the lender an amount equal to the current market price less the Contract Price. After each mark-to-market there is a new "Adjusted Contract Price" equal to the original Contract Price, or the last Adjusted Contract Price, plus or minus, as the case may be, the mark-to-market. Upon return of the borrowed securities, the lender is required to pay to the borrower an amount equal to the Adjusted Contract Price.] Securities in this category were all attributable to accounts of customers of Weis.	

Exhibit E

<u>Category Number</u>	<u>Title and Definition</u>	<u>Amount</u>
4.	RECEIVED FOR CUSTOMERS	
	A. TRANSFER OF ACCOUNT	304,720.00
	Securities received by Weis as a transfer of the accounts of customers of the deliverers to Weis, establishing new accounts for said customers as new customers of Weis or adding to said customers' existing accounts as customers of Weis.	
	B. DELIVERY AGAINST PAYMENT	271,605.89
	Securities which were held by the deliverers for customers of Weis and which were received by Weis to enable Weis to effect deliveries pursuant to contracts for the sale of securities effected by Weis for accounts of such customers.	
5.	MARKS TO MARKET	38,000.00
	Marks-to-market (as defined in category 3 above) received by Weis. No securities accompany marks-to-market.	
6.	RECLAMATIONS	
	A. Securities received by Weis which Weis previously sent to the deliverer but which were rejected by him and returned to Weis through SCC.	123,489.00
	B. Securities received by Weis, but which were rejected by Weis and on May 24, 1973 returned to the deliverer through SCC.	52,322.23
7.	DUE BILL REDEMPTION	19,200.00
	Securities received by Weis constituting a stock dividend or distribution received by the deliverers and owed to Weis as a result of prior purchases of the underlying securities effected by Weis for its customers. [When a deliverer fails to deliver a stock dividend or distribution on a purchase effected by the receiving broker for his customer, he delivers a due bill therefor. The receiving broker may charge the value of the due bill stock back to the deliverer through the facilities of SCC. Upon redemption of the due bill by the deliverer's delivery of the stock, the deliverer is entitled to payment of the amount charged back by the receiving broker.]	

Exhibit E

<u>Category Number</u>	<u>Title and Definition</u>	<u>Amount</u>
8.	CUSTOMER ACCOUNT FAIL TO RECEIVE Securities received by Weis constituting part of a customer's account which were not delivered on a prior transfer of that customer's account (see category 4A).	4,065.00
9.	BUY-IN CHARGES A charge against Weis, arising from the buy-in of securities by the delivering broker on account of a prior failure to deliver securities by Weis. [If Weis failed to deliver securities to another broker (the "receiver") the receiver may buy-in the securities in the market and, if the purchase price on the buy-in is higher than the contract price on the fail, bill the difference to Weis.]	14.04
TOTAL		<u>\$1,909,093.66</u>

Exhibit F

CORRECTIONS OF TRANSCRIPTS OF DEPOSITIONS

WITNESS: PETROSKI

<u>Page</u>	<u>Line</u>	<u>Change</u>
4	5	the delivery in the Settlement Department = the central delivery and settlement departments
5	23	performed = performs
6	15	firm = firms
7	6	Walenstrom = Waldenstrom
8	17	him = many
20	16	the stock clerk's = Stock Clearing's
21	1	for = or
26	18	resetting = recited
35	14	when = question
35	17	board = broad
39	15	discontinued = continued
47	17	office = Service
54	6	securities = security

WITNESS: WALDENSTROM

1	Caption: 2d box	Defendant = Defendants
3	9	[The question to which "Subsidiary of the Stock Exchange" was the answer has been omitted.]

WITNESS: FUCHS

8	2	SEC = SCC
8	5	SEC = SCC

Exhibit F

<u>Page</u>	<u>Line</u>	<u>Change</u>
11	10	appointment = employment
14	5-7	[Misplaced; the line which follows line 4 is line 8.]
19	13	entrusting = instituting
19	25	Thomas White = tomorrow's witness

WITNESS: DYBO

9	9	other = are the
22	7	deliveries = securities
29	22	the = at the
37	9	interes = interest
37	12	aroung = around
37	17	the = that
37	19	incidate = indicate
39	10	job = drop
49	7	down = in
49	7	through CCS = through SCC
54	12	afar = far
54	20	stock = 3stock
54	21	to = from
57	6	be be = be
57	12	out = allowed
57	14	thiry = thirty
57	21	No, = No [delete comma.]
58	4	eliminate = illuminate
69	12	one = once

Exhibit F

<u>Page</u>	<u>Line</u>	<u>Change</u>
		<u>WITNESS: HOYT</u>
4	5	a director = Director
4	8	a director = Director
4	17	1972 = 1973
12	10	date = day
12	13	him = it
27	5	and = in
34	2	because = but
34	16	opened = open

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SECURITIES INVESTOR PROTECTION CORPORATION,

Applicant,

SECURITIES and EXCHANGE COMMISSION,

Plaintiff,

-against-

WEIS SECURITIES, INC.,

Defendant.

73 Civ 2332

-----X
STOCK CLEARING CORPORATION,

Plaintiff,

-against-

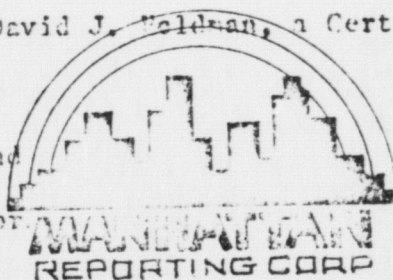
WEIS SECURITIES, INC., and EDWARD S. REDING-
TON, as Trustee of WEIS SECURITIES, INC.,

Defendant.

-----X

Deposition of STANLEY PETROSKI, taken
by the Defendant pursuant to agreement, at the
offices of Messrs. Hughes, Hubbard & Reed, One
Wall Street, New York, N.Y., on October 30, 1974,
at 10:10 a.m., before David J. Feldman, a Certified
Shorthand Reporter and
Notary Public within and
for the State of New York

Certified Shorthand Reporters



Extract of Petroski Deposition

[2]

APPEARANCES:

Messrs. MILBANK, TWEED, HADLEY & MC CLOY,
Attorneys for Plaintiff Stock Clearing
Corporation,

One Chase Manhattan Plaza
New York, New York

BY: JOHN J. JEROME, ESQ.,
Ms. LANA BORSOOK, ESQ.,

Of Counsel.

Messrs. HUGHES, HUBBARD & REED,
Attorneys for Defendant Edward S. Reding-
ton, as Trustee of Weis Securities, Inc.,

One Wall Street
New York, New York 10005

BY: GEORGE A. DAVIDSON, ESQ.,
ALLAN J. KASEN, ESQ.,

Of Counsel

c0c

IT IS HEREBY STIPULATED AND AGREED
by and between counsel for the respective parties
hereto, that the signing of the within deposition
shall be and the same are hereby waived.

S T A N L E Y P E T R O S K I , called

as a witness by the Defendant, having been first
duly sworn by the Notary Public (David J. Feld-
man, C.S.R.) and stating his residence as 16

Diane Lane, East Northport, New York 11731, was
MANHATTAN REPORTING CORP.

Extract of Petroski Deposition

Petroski

[3]

1
2 examined and testified as follows:

3 EXAMINATION BY MR. DAVIDSON:

4 Q Mr. Petroski, by whom are you employed?

5 A Presently? By SIAC. Security Industries
6 Automation Corporation.

7 Q And what is your job title?

8 A Manager of the Settlement Department.

9 Q For how long have you been so employed?

10 A SIAC? Two years.

11 Q Have you had the same job title through-
12 out that two year period?

13 A Yes.

14 Q Prior to your employment with SIAC, by
15 whom were you employed?

16 A Stock Clearing Corporation.

17 Q What was your job with Stock Clearing
18 Corporation?

19 A Same. Manager of settlement.

20 Q For how long had you been with Stock Clear-
21 ing Corporation?

22 A Since 1959, that's --

23 Q When did you become manager of the Settle-
24 ment Department?

25 A Eight years ago. July one.

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2223

Petroski

[5]

1 A I imagine the board.

2 Q Do you know who owns the stock of SIAC?

3 A No.

4 Q Would it refresh your recollection if I
5 suggested that the stock of SIAC was owned by the New
6 York Stock Exchange?
7

8 A I believe that the New York Stock Exchange
9 and the American Stock Exchange are involved. To
10 what degree, I don't know.

11 Q When did SIAC come into existence?

12 A July 1972.

13 Q What is the relationship of SIAC to Stock
14 Clearing Corporation?

15 MR. JEROME: If you know.

16 A The relationship is that we perform their
17 services, delivery and settlement and other performances.
18 We act as a service organization for them.

19 Q Does Stock Clearing Corporation continue
20 to exist today?

21 A Yes.

22 Q Prior to July of 1972, were the functions
23 which SIAC performed for Stock Clearing Corporation
24 performed by Stock Clearing Corporation itself?

25 A Yes.

1
2 BY MR. DAVIDSON:

3 Q Is there a term used for the day on which
4 settlement must be effected for trades on a prior
5 day?

6 A It's called settlement day.

7 Q And for trades made in the regular way,
8 the settlement day would be five days after the
9 trading day?

10 A Yes. Five business days.

11 Q A delivering broker who has received a
12 balance order, would, as I understand it, place the
13 stock he's obligated to deliver into an envelope
14 marked with the name of the receiving broker, and the
15 total value of the envelope, and together with de-
16 livery bills.

17 He would then deliver such envelopes to
18 the central delivery department along with credit
19 lists which would be summaries of the contents of
20 up to 18 envelopes. Is that your understanding?

21 A Yes. Except as to number that's posted
22 on the envelope, not the name. Each member has an
23 assigned company number

24 Q Fine. So the outside of the envelope
25 would not contain the name of the broker but only

Excerpt of Petroski Deposition

Petroski

[14]

1

2

his code number?

3

A That's right.

4

5

Q During what period of time are deliveries made to Stock Clearing Corporation for a particular settlement day?

6

7

A The schedule --

8

9

10

MR. JEROME: Excuse me. Were we, in prior question, talking about deliveries out?

11

12

MR. DAVIDSON: No. We are so far only talking about deliveries in.

13

14

THE WITNESS: Actually it's deliveries through.

15

16

17

18

19

20

21

22

23

24

25

A The schedule is night deliveries for next days settlement 4:00 to 9:00 p.m. On the same day settlement is 8:00 in the morning to 11:30. And reclamation period from 11:30 to 2:00 p.m.

Q So that the envelopes which will be picked up by a particular broker on settlement day have been delivered into Stock Clearing Corporation beginning at 4:00 p.m. the night before?

A Correct.

Q When the envelopes are delivered to the --

Extract of Petroski Deposition
Petroski

[15]

1 would that be the central delivery department?

2 A Central delivery department.

3 Q A clerk would compare the credit list
4 with the information on the outside of the envelopes?

5 A Yes, sir.

6 Q And he would date stamp the credit lists?

7 A Both copies.

8 Q Right.

9 And he would then return one copy of the
10 credit list to the messenger?

11 A Yes.

12 Q And he would retain the other copy of the
13 credit list?

14 A Right.

15 MR. JEROME: By "messenger", you
16 mean messenger from whom?

17 MR. DAVIDSON: That would be from
18 the broker who is delivering the securities to
19 the Stock Clearing Corporation.

20 Q Is this stamp, which the clerk puts on
21 the credit list, time stamped?

22 A Yes.

23 Q Do you know whether the credit lists in
24 respect of deliveries for settlement day May 24, 1973
25

Extract of Petroski Deposition

Petroski

16

1 are still in existence?

2 A Yes. On microfilm.

3 Q The clerk at Stock Clearing Corporation
4 would then sort the envelopes into the cubicles
5 maintained for each of the clearing members; is that
6 correct?

7 A SIAC employee will do a sorting process
8 and it gets to the receiver.

9 Q Does that sorting process take place promptly
10 after the securities are delivered in?

11 A Yes.

12 Q The SIAC employee does not look inside
13 the envelopes, does he?

14 A That's right, he does not.

15 Q On settlement day, at what point is the
16 broker, who is receiving envelopes, entitled to pick
17 them up?

18 A All during the course of the day. Up to
19 2:00 p.m.

20 Q And when does the day begin?

21 A On settlement day, 8:00 a.m.

22 Q So in other words, the receiving brokers
23 would send messengers to SIAC at varying periods
24 throughout the day, beginning at 8:00 a.m. and ending
25

Extract of Petroski Deposition

Petroski

17

1
2 at 2:00 p.m. to pick up whatever happened to be in
3 their cubicle?

4 A Yes.

5 Q As you understand it, if there is some
6 problem with a particular delivery, say the envelope
7 is empty, or the certificate's mutilated, or it's
8 the wrong stock or something like that, it's your
9 understanding that that's a matter between the broker
10 who delivered that through Stock Clearing and the
11 receiving broker?

12 MR. JEROME: Can I have the question
13 again?

14 (The pending question was read.)

15 A I wouldn't be aware --

16 MR. JEROME: Just a minute. Don't
17 answer any questions.

18 Okay.

19 A Qualified yes. I wouldn't be aware of
20 the contents of the envelope or the condition therein.

21 Q My real point was that the receiving
22 broker would not make a complaint to Stock Clearing
23 Corporation but instead would make his complaint to
24 the delivering broker.

25 MR. JEROME: If you know.

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

Extract of Petroski Deposition

Petroski

[26]

1
2 Q If a broker is obligated to deliver a cus-
3 tomer's account and fails to deliver some of the se-
4 curities in the customer's account, can the broker,
5 who is scheduled to receive those securities, issue
6 a document which, in effect, turns the fail to de-
7 liver, the particular securities of the customer, into
8 a normal fail?

9 A I don't know.

10 Q Mr. Petroski, before you testified, I believe,
11 that you are familiar with a process called reclamation?

12 A Yes.

13 MR. JEROME: I don't recall that testi-
14 mony.

15 THE WITNESS: I believe the schedule
16 was included --

17 MR. DAVIDSON: For Counsel's benefit,
18 he's resetting the schedule of deliveries to
19 Stock Clearing Corporation.

20 MR. JEROME: I think he testified in
21 respect of the hours that were involved in the
22 reclamation process in response to Mr. Davidson's
23 question.

24 BY MR. KASEN:

25 Q Can you explain to me what you understand

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

Extract of Petroski Deposition
Petroski

[27]

1 to mean by the term reclamation?
2

3 A When a receiver receives a security with an
4 irregularity, he returns it to the deliverer.

5 Q So, in effect, does a reclamation involve
6 the refusal of a broker to receive a security from
7 another broker?

8 MR. JEROME: I object to the form of
9 the question. It calls for the operation of the
10 mind of a broker out in the great beyond some-
11 where, and is objectionable for that reason.

12 MR. KASEN: I just asked him to testify
13 to a physical fact.

14 THE WITNESS: It's a return --

15 MR. JEROME: Just a minute, Mr. Wit-
16 ness.

17 Refusal is not a physical fact. If
18 you're talking about returns, that's another
19 matter. But refusal calls for -- any testi-
20 mony calling for a broker refusing calls for the
21 operation of the broker's mind. Again, it's ob-
22 jectionable.

23 MR. KASEN: Mark that as Defendant's
24 Exhibit 3, please.

25 (Document entitled "Uniform

Extract of Petroski Deposition

Petroski

[35]

1
2 came to his attention that there was some sort of
3 financial irregularities or financial difficulties
4 of Weis Securities.

5 MR. JEROME: Does your question fi-
6 nancial irregularities subsume fraud?

7 MR. DAVIDSON: It would.

8 MR. JEROME: Then I direct the wit-
9 ness not to answer the question on the ground that
10 it's too broad. Ask the question specifically.

11 MR. DAVIDSON: Your complaint says
12 fraud. I'm trying to find out when he first
13 knew that there was some trouble at Weis. It's
14 a simple when. I'll pin it down to precisely
15 what he found out at some future questions.

16 MR. JEROME: The question is still
17 too board. Ask him specific questions. Other-
18 wise I'll direct him not to answer.

19 BY MR. DAVIDSON:

20 Q Did there come a time when you learned of
21 financial difficulties at Weis Securities?

22 MR. JEROME: I direct the witness
23 not to answer to the extent that the question
24 might subsume the question of fraud.

25 MR. DAVIDSON: I just cut that out.

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 -- 267-2228

Extract of Petroski Deposition

Petroski

[36]

1
2 MP. JEROME: Okay.

3 You may answer the question.

4 A Yes.

5 Q And what was that time?

6 A Approximately 10:00 a.m. on the 24th.

7 Q And what did you learn at 10:00 a.m. on
8 the 24th? You're talking about the 24th of May,
9 1973?

10 A Yes, sir.

11 Q All right.

12 A At a meeting we were told that Weis Se-
13 curities had problems that we had to settle that day.

14 Q And who attended that meeting?

15 A If you'll pardon me there was about 25
16 people there I can tell you some of the names but
17 I don't remember them all.

18 Q Were they all SIAC employees?

19 A SIAC and Stock Clearing Corporation em-
20 ployees.

21 Q . And --

22 A Do you want the ones I remember?

23 Q No. No.

24 Who told you that there were these dif-
25 ficulties?

Extract of Petroski Deposition
Petroski

[37]

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A The meeting was conducted by Diran Kaloostian, Vice-President of CCS.

Q And as fully as you can remember it, what did Mr. Kaloostian say?

A I don't remember in detail. You know, that the firm was in trouble and that we had to make sure that everything went all right that day in the normal manner, business manner.

Q I understand you to be saying that Mr. Kaloostian said, in effect, that you as an employee of SIAC should conduct your business vis-a-vis Weis in the ordinary way?

MR. JEROME: I object to the form of the question. I don't think that that's precisely what he said.

THE WITNESS: No.

MR. JEROME: Why don't you read back his testimony?

MR. DAVIDSON: I heard his testimony.

MR. JEROME: Then don't characterize it.

MR. DAVIDSON: I'm just trying to understand what he meant by it.

MR. JEROME: Ask him a question and

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

Petroski

40

1
2 A Any further -- I don't understand the
3 question. Repeat it, please.

4 Q You've testified to a meeting at 10:00
5 a.m. in which Mr. Kaloostian told you about financial
6 difficulties of Weis.

7 A Yes.

8 Q You testified to a conversation after 6:00
9 p.m. in which you were informed by either Mr. Fuchs
10 or Mr. Hoyt that the difficulties had continued. I'm
11 asking whether you had any conversations or obtained
12 any information between those two times relative to
13 financial difficulties at Weis.

14 A No further information, but many conver-
15 sations concerning Weis.

16 Q Did any of those conversations, which you had
17 on the 24th, relate to what actions that SIAC or SCC
18 should take in regard to Weis?

19 A Yes.

20 Q And how many such conversations did you
21 have?

22 A I don't recall the number.

23 Q Was it more than half a dozen?

24 A More than half a dozen.

25 Q With whom were those conversations?

Extract of Petroski Deposition
Petroski

[41]

1

A Mr. Fuchs, Mr. Hoyt, and I believe others.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Did either Mr. Fuchs or Mr. Hoyt or anyone

else instruct you to take any particular actions in
regard to Weis Securities on that day?

A Yes.

Q And who gave you those instructions?

A I'm sorry, it was one or the other. I
don't recall.

Q And what were the instructions?

A That Weis be the first account to be settled
that day.

Q And were those instructions carried out?

A Yes.

Q At what time was Weis' account settled?

A Sometime between 4:00 and 5:00.

Q When you say "settled", do you mean that
a preliminary statement was prepared by your depart-
ment?

A Yes.

Q Is there any written record which would
reflect at what point the Weis account was settled on
that day?

A No. We don't record the settlement times
for individual accounts.

Extract of Petroski Deposition

Petroski

[42]

1
2 Q Did Weis pick up its preliminary state-
3 ment?

4 A I assume so.

5 Q Were you given any further instructions
6 regarding Weis other than to settle their account
7 first on May 24th?

8 A Yes.

9 Q What were those further instructions?

10 A When you receive payment, he happened to be
11 in a debit position on that day, over a million dol-
12 lars, when you receive payment, not to deposit into
13 the bank immediately. And I recall now the previous
14 instruction was -- just before that was to accept
15 an uncertified check.

16 Q Do you recall who gave you those instruc-
17 tions?

18 A Mr. Fuchs. And after that, there's one
19 more, this was the final one, to give the check to
20 Mr. Baer, Manager in CCS.

21 Q And you carried out all these instructions?

22 A Yes, sir.

23 Q What is Mr. Fuchs' position at SCC?

24 A He was a vice-president of CCS and SCC.

25 Q Are you generally familiar with the Stock

Extract of Petroski Deposition
Petroski

[43]

1 Clearing Corporation rule requiring that payments by
2 clearing members in amounts over 5,000 be by certified
3 check unless the Stock Clearing Corporation waives
4 the certification requirement?
5

6 A Yes. And it's 5,000 or more.

7 Q Who at SCC makes the determination as to
8 whether to waive that requirement of certification?

9 A Depending on the amount, the manager to
10 vice-president. In this case, not the manager.

11 Q And the vice-president you referred to,
12 would have been --

13 A Mr. Fuchs.

14 Q During any of your discussions on May 24th,
15 was there any discussion of the possibility of stopping
16 deliveries of securities to Weis?

17 A No.

18 Q Was there any discussion of the possibility
19 of reversing deliveries?

20 A No.

21 Q On May 24th, did you have any conversation
22 with any representative of Weis Securities?

23 A Yes.

24 Q How many such conversations did you have?

25 A Two.

A-92
Extract of Petroski Deposition
Petroski

[44]

1
2 Q And with whom did you have those conver-
3 sations?

4 A I don't recall the man's name.

5 Q Was it the same individual in both cases?

6 A Yes.

7 Q How did the first such conversation come
8 about?

9 MR. JEROME: Excuse me, Counsel. Per-
10 haps if you mention the name, if you have it,
11 you might refresh the witness' recollection, for
12 the record.

13 Q Would the name Louis Dybo ring a bell?

14 A No.

15 Q How did the first such conversation come
16 about?

17 A Mr. Waldenstrom called me to the phone,
18 and I spoke to Weis. Weis spoke to me, actually.

19 Do you want the conversation?

20 Q Yes.

21 A In general terminology, I don't know the
22 exact words, but the man was quite upset. He said he
23 sent his messenger to the bank to have the check certi-
24 fied, and that the bank froze his account. And he
25 didn't understand why.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

And he said he had plenty of money to cover the check to be certified. And he asked if we would accept an uncertified check.

Q And what did you say to this individual?

A I told him I couldn't make that decision. I took his name, phone number, and I said I would call back.

Q I take it whatever piece of paper you took this name and phone number on, you no longer have?

A It's among the missing.

Q And what did you do after completing the telephone conversation?

A I called Mr. Fuchs and explained the conversation to him, and he instructed me to take an uncertified check for settlement.

Q At what time was your first conversation with a Weis representative?

A About 4:00.

Q And did you then call back the Weis representative?

A I did. I told him to send the check to my attention.

Q At what time of day did you make that

A-94
Extract of Petroski Deposition
Petroski

46

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

call?

A Five minutes after the first conversation.

Q Did the Weis representative say anything during that conversation?

A No. He said thank you, and hung up.
We'll send it down.

Q Do you know whether anyone else at SIAC, SCC or CCS had any telephone conversations with any representatives of Weis Securities on May 24th?

A I know of one. Howie Waldenstrom.

Q Mr. Waldenstrom's conversation is the only one you know of?

A That's right.

Q Was Mr. Waldenstrom's conversation the one which you previously testified that you picked up?

A Yes.

Q Has Mr. Waldenstrom ever told you what occurred during that conversation prior to your coming on the phone?

A No. But he warned me that there was a problem with Weis, and I took the phone.

Can I reword that and say I believe, you know. He didn't tell me the exact details of the conversation.

Extract of Petroski Deposition
Petroski

[51]

1
2 Securities on May 24th?

3 A In writings?

4 Q Yes.

5 MR. JEROME: Of telephone conversa-
6 tions.

7 A The answer is no.

8 Q When Stock Clearing Corporation pays drafts
9 to brokers entitled to receive money as the result
10 of a particular settlement day's activities, it does
11 not first collect the monies paid by brokers owing
12 money before paying the brokers entitled to receive
13 money, does it?

14 MR. JEROME: Do you understand the
15 question and do you know the answer?

16 THE WITNESS: Let me --

17 A Are you saying that if broker A is due a
18 draft and broker B is to pay a check, that we hold
19 up broker A's draft?

20 Q That's the question essentially.

21 A The answer is no.

22 Q You said that you had seen several docu-
23 ments in testifying regarding Defendant's Exhibit 4
24 for identification. Have you seen any other memoranda
25 prepared by Mr. Hoyt relating to Weis Securities?

Extract of Petroski Deposition
Petroski

53

1
2 Q During your conversations with the repre-
3 sentative of Weis whom you spoke to on May 24th, did
4 you ever discuss the possibility of having the stock
5 received by Weis on that day delivered back to SCC?

6 A No.

7 MR. JEROME: The question was asked
8 before, but I'll let it go.

9 MR. DAVIDSON: I don't think I have
10 much more for Mr. Petroski, but it might be help-
11 ful if I took a brief recess and got odds and ends
12 together before finishing it up.

13 MR. JEROME: Okay.

14 (A short recess was taken.)

15 BY MR. DAVIDSON:

16 Q Mr. Petroski, was the amount which Weis
17 was obligated to pay to the Stock Clearing Corporation,
18 in regard to the May 24th settlement activities, an
19 unusually large amount?

20 A I don't know if it was unusually large for
21 that account.

22 MR. JEROME: Do you say you don't
23 know or --

24 THE WITNESS: I don't know if that
25 account, it was an unusually large amount.

Extract of Petroski Deposition
Petroski

54

1
2 MR. DAVIDSON: Off the record.

3 (Discussion off the record.)

4 Q Do you know whether the Stock Clearing
5 Corporation has ever required a clearing member to
6 provide some sort of additional securities in cases
7 in which there is financial difficulty?

8 A Yes.

9 Q What such instances are you aware of?

10 A Franklin National.

11 Q And in that case did Stock Clearing require
12 the depositing of additional security in order to
13 continue clearing operations for them?

14 A In order to continue delivery and settle-
15 ment, yes.

16 MR. JEROME: Just for the record,
17 that was -- Franklin National was subsequent to
18 the transaction which is under discussion here,
19 namely on May 1973?

20 THE WITNESS: Yes.

21 MR. DAVIDSON: I have no further ques-
22 tions of Mr. Petroski.

23 THE WITNESS: For the record, can I
24 make a statement?

25 MR. DAVIDSON: Sure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SECURITIES INVESTOR PROTECTION CORPORATION, :

Applicant, :

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-against- :

WEIS SECURITIES, INC., :

Defendant :

INDEX NO.

-----X
STOCK CLEARING CORPORATION, :

Plaintiff, :

-against- :

WEIS SECURITIES, INC., and :

EDWARD S. REDINGTON, as Trustee of :

WEIS SECURITIES, INC., :

Defendants. :

73 Civ. 2332

-----X

Deposition of DAVID FUCHS, taken by
defendant pursuant to agreement of counsel, at
the offices of Hughes, Hubbard & Reed, One Wall
Street, New York, New York, on November 4, 1974,
at 3:30 p.m, before Mary Ellen Chetwood, a
Shorthand Reporter and Notary Public within and
for the State of New York.



Certified Shorthand Reporters

(212) 267-2228

132 NASSAU STREET
NEW YORK, N. Y. 10038

Extract of Hughes Deposition

[2]

A P P E A R A N C E S :

MESSRS. HUGHES, HUBBARD & REED
Attorneys for the Trustee Edward S. Redington
One Wall Street
New York, New York

BY: GEORGE DAVIDSON, ESQ.
and
ALLAN J. KASEN, ESQ.,

Of Counsel

MESSRS. MILBANK, TWEED, HADLEY & McCLOY
Attorneys for Plaintiff Stock Clearing Corporation
1 Chase Manhattan Plaza
New York, New York

BY: JOHN J. JEROME, ESQ.,
and
LANA BORSOOK, ESQ.,
and
THOMAS A. WILLIAMS, ESQ.,

Of Counsel

o0o

IT IS HEREBY STIPULATED AND AGREED,
by and between counsel for the respective parties
hereto, that the signing of the within deposition
shall be and the same are hereby waived.

o0o

Extract of Fuchs Deposition
Fuchs

[5]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

legal conclusion.

Q Was the business of Depository Trust Co.
the same as the business of Central Certificate Service,
Inc.?

A Yes.

Q Was the stock of Central Certificate Service,
Inc., also owned by the Stock Exchange?

A Yes, sir.

Q What is your job title at Depository Trust Co.?

A Vice President of Operations.

Q Have you held that position throughout the
period of your employment by Depository Trust Co.?

A Yes, I have.

Q What was your job title at Stock Clearing
Corporation?

A Vice President for clearance and settlement.

Q Do you know who owns the stock of Stock
Clearing Corporation?

A The New York Stock Exchange also.

Q What was your job title when you were employed
by the New York Stock Exchange?

A Really several. I was in the Department of
Member Firms as an assistant director. Do you want more
on that?

Extract of Fuchs Deposition
Fuchs

[7]

1

2

A Okay. I don't understand it.

3

4

Q It's as simple as I can make it. It is a very simple question.

5

6

Are there any business relationships between them?

7

8

9

A The Depository Trust Co. acts for its participants, some of whom, or most of whom, are participants of Stock Clearing Corporation.

10

11

But I don't think there are any other direct relationships.

12

13

14

Q During the period May 1973, did Depository Trust Co. perform any services for Stock Clearing Corporation?

15

16

A Again, not directly. I don't know direct relationships.

17

18

Q Are you familiar with an organization called SIAC?

19

20

A Yes.

21

22

23

24

25

Q What is SIAC?

A It is a subsidiary of the New York and American Stock Exchanges. And it performs certain computer and clerical functions for the clearing corporations of those exchanges.

Q Included among those clearing corporations

Extract of Fuchs Deposition

Fuchs

[12]

1
2 transactions effected through Central Certificate Service,
3 Inc., on May 24, 1973, should be paid to Weis Securities?

4 A Repeat that, please.

5 MR. DAVIDSON: Read the question back,
6 please.

7 (The pending question was read by
8 the reporter.)

9 A No, I did not.

10 Q Do you know who did play such a role?

11 MR. JEROME: The answer was no.

12 MR. DAVIDSON: He said he did not. I
13 asked if he knew who did.

14 MR. JEROME: Oh, sorry.

15 A I would assume Mr. Petroski.

16 Q If I were to tell you that Mr. Petroski has
17 testified that he had a telephone conversation with you
18 on May 24, 1973, in which you authorized him to accept
19 an uncertified check from Weis Securities, would you say
20 that Mr. Petroski was mistaken?

21 A No.

22 Q Do you recall that you did not have such a
23 conversation with Mr. Petroski?

24 A I do not recall that I did have such a con-
25 versation with Mr. Petroski.

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

Extract of Fuchs Deposition
Fuchs

[13]

1
2 Q If Mr. Petroski had presented such a request
3 to you, would you have granted it?

4 MR. JEROME: I object to the question
5 on the ground that it calls for speculation on
6 the part of the witness. It's objectionable for
7 that reason, and as to form.

8 MR. DAVIDSON: What's your objection?

9 MR. JEROME: What?

10 MR. DAVIDSON: What's your form
11 objection?

12 MR. JEROME: It is subsumed in the
13 speculation. It's objectionable because it
14 requires --

15 MR. DAVIDSON: In other words, you do
16 not have any separate objection as to form.

17 MR. JEROME: Well, subsumed in the
18 objection as to speculation.

19 BY MR. DAVIDSON:

20 Q Do you recall ever having given authorization
21 to anyone to accept an uncertified check payable to Stock
22 Clearing Corporation?

23 MR. JEROME: He answered that question
24 before, I believe. But go ahead.

25 A The answer is still no.

Extract of Fuchs Deposition
Fuchs

[14]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Was it outside the scope of your duties to have authorized someone in May of 1973 to accept an uncertified check from Stock Clearing Corporation?

A Did I accept an uncertified check from Stock Clearing Corporation?

Q Payable to, I'm sorry, I misspoke.

A No. It was not outside my scope as an officer of Stock Clearing.

Q I'm a little confused.

In May of 1973, were you an officer of Stock Clearing Corporation?

A I still had a title at Stock Clearing Corporation, but I did not actively partake in Stock Clearing activities.

Q Did you draw any salary from Stock Clearing Corporation?

A No.

Q Is there a particular Stock Clearing Corporation officer to whom requests to waive the certified check requirement would ordinarily be directed?

A Not really. They are few and far between, usually from irate participants who felt they didn't owe the money that the preliminary statement showed. It was not a regular routine thing.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----X
SECURITIES INVESTOR PROTECTION CORPORATION,

Applicant,

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

WEIS SECURITIES, INC.,

Defendant.

INDEX NO.

73 Civ. 2332
-----X

STOCK CLEARING CORPORATION,

Plaintiff,

-against-

WEIS SECURITIES, INC., AND

EDWARD S. WASHINGTON, as Trustee of

WEIS SECURITIES, INC.,

Defendants.
-----X

Deposition of LOUIS DYBO, taken by
defendants pursuant to agreement of counsel, at
the offices of Messrs. Milbank, Tweed, Hadley &
McCloy, 1 Chase Manhattan Plaza, New York, New York,
on November 5, 1974, at 10:45 a.m., before
Darlene Castellana, a Shorthand Reporter and
Notary Public within and for the City of New York.

MANHATTAN
REPORTING CORP

Certified Shorthand Reporters

(212) 267-2228

132 NASSAU STREET
NEW YORK, N. Y. 10038

Extract of Dybo Deposition

[2]

A P P E A R A N C E S :

MESSRS. MILBANK, TWEED, MADLEY & McCLOY
Attorneys for Plaintiff Stock Clearing Corporation
1 Chase Manhattan Plaza
New York, New York

BY: JOHN J. JEROME, ESQ.
and
LANA BOROOK, ESQ.,
Of Counsel

MESSRS. HUGHES, HUBBARD & REED
Attorneys for the Trustee Edward S. Redington
One Wall Street
New York, New York

BY: GEORGE A. DAVIDSON, ESQ.
and
ALLAN J. KASEN, ESQ.,
Of Counsel

ooo

IT IS HEREBY STIPULATED AND AGREED,
by and between counsel for the respective parties
hereto, that the signing of the within deposition
shall be and the same are hereby waived.

ooo

1
2 L O U I S D Y B O , residing at
3 646 47th Street, Brooklyn, New York, called as
4 a tness, first being duly sworn by the Notary
5 Public (Darlene Castellana), was examined and
6 testified as follows:

7 EXAMINATION BY MR. JEROME:

8 Q Mr. Dybo, were you at one time employed by
9 Weis Securities?

10 A Yes.

11 Q Would you state the period of time during
12 which you were employed by Weis Securities?

13 A January '73 to August '73.

14 Q Is is correct then that you terminated your
15 employment in August '73 with Weis Securities?

16 A Yes.

17 Q What were the circumstances of the termination
18 of your employment?

19 A Services weren't needed no more. They were
20 in liquidation already and services weren't needed no more.

21 Q Prior to January of 1973, what was your
22 employment?

23 A I was unemployed.

24 Q For what period of time?

25 A From June '72 to January '73.

A-108
Extract of Dybo Deposition
Dybo

[4]

1

2

Q Prior to June 1972, what was your employment?

3

A F. M. Mayer & Company.

4

Q Is that a brokerage house, Mr. Dybo?

5

A Yes, it is.

6

Q What were your duties at Weis Securities

7

during the period of your employment?

8

A Receive and deliver clerk.

9

Q What were your duties at F. M. Mayer & Company?

10

A Receive and deliver clerk.

11

Q Prior to working for F. M. Mayer & Company,

12

did you have employment with any other securities and

13

brokerage houses as a receive and deliver clerk?

14

A Philip Budin & Company, an over-the-counter

15

house.

16

Q Can you spell that for the reporter?

17

A P-h-i-l-i-p, B-u-d-i-n.

18

Q And what was the period of employment in

19

respect of that?

20

A I would say December '69 through May '71.

21

Q Will you tell us for the record, Mr. Dybo,

22

what your educational background is?

23

A I went up until tenth grade, complete.

24

Q How long have you been working?

25

A I don't understand that. I mean --

Extract of Dybo Deposition

Dybo

[5]

1
2 Q Well, since you left school and became
3 gainfully employed, starting say with the age of 16,
4 how long have you been working?

5 A Eleven years.

6 Q Eleven years. And during that eleven year
7 period of time, have you for the most part been receive
8 and delivery clerk in brokerage houses?

9 A I would say about six years of it, or so.

10 Q About six years of it. Is it correct that
11 your last employment as a receive and deliver clerk
12 terminated in August 1973 with the termination of your
13 employment with Weis Securities?

14 A Yes.

15 Q Is there any other job title that you had
16 at Weis Securities other than receive and deliver clerk?

17 A No.

18 Q Were your duties at Weis Securities as a
19 receive and deliver clerk identical or substantially
20 similar to your duties as a receive and deliver clerk
21 with the other securities houses?

22 A I would say they are basically similar.

23 Q Basically similar?

24 A Yes.

25 Q Would you describe what these duties are or

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

Extract of Dybo Deposition

Dybo

[6]

1
2 were?

3 A I would receive the stock from the runners
4 when they go down to the house and bring it back up.

5 I check out the stock and make sure it is
6 in good deliverable form, then I make sure we know the
7 trade. When we know the trade, I accept the stock and
8 take a copy of my delivery forms at the end of the day.

9 I add up my delivery slips. I get a total
10 from the girls in our system, what they say what we
11 receive in. They should balance internally.

12 Then I give that figure either to myself or
13 to the deliver man who puts it on the sheet, gets the
14 delivery figure and then decides whether we receive a
15 check or there is a draft to the houses.

16 Q During that six year period of your employ-
17 ment as a receiver and delivery clerk, are those duties
18 which you described ever different substantially?

19 MR. DAVIDSON: Object to the form of
20 the question.

21 MR. JEROME: What is the basis of your
22 objection?

23 MR. DAVIDSON: It assumes a six year
24 period as a receive and delivery clerk.

25 MR. JEROME: Let the record show that I

1
2 don't intend to assume a six year period.

3 BY MR. JEROME:

4 Q Will you please answer the question.

5 A Will you please repeat it?

6 Q Sure. I will repeat it for you.

7 During your six year employment intermittently
8 as a receive and delivery clerk, did your duties differ
9 in any way from the duties that you have described?

10 A No, except that Budin, it was over the counter.
11 It dealt with checks rather than settlement houses.
12 Brokers delivered stocks over the window and we made
13 them a check -- the same balance except there is no
14 house involved.

15 Q Coming back to your duties as a receive and
16 deliver clerk, in focusing on the receive end, when you
17 were with Weis Securities, did you from time to time
18 receive envelopes from Stock Clearing Corporation?

19 A Yes.

20 Q And is it correct that those envelopes were
21 picked up from Stock Clearing Corporation?

22 A Yes.

23 Q As far as you know, who was in charge of
24 picking up those envelopes?

25 A One of our runners. I don't know which one

Extract of Dybo Deposition

Dybo

[8]

1
2 offhand.

3 Q Do you know who picked up the envelopes on
4 May 24, 1973?

5 A The same runner that picks them up every day.

6 Q You just have one runner?

7 A We have one for New York, one for CCS, one
8 for American.

9 Q You don't know his name?

10 A Not offhand -- Bill, I believe.

11 Q How many times a day while you were at Weis,
12 to your best recollection, were securities picked up on
13 a daily basis from Stock Clearing Corporation?

14 A Say four, five.

15 MR. JEROME: Off the record.

16 (Discussion off the record.)

17 BY MR. JEROME:

18 Q Mr. Dybo, would you describe what happens
19 or what happened at Weis Securities on a daily basis in
20 respect of picking up stock in envelopes from Stock
21 Clearing Corporation? Just for the record, run through
22 a daily transaction for us.

23 A You mean, when the runner brings it, so on and
24 so forth?

25 Q How does it originate?

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

Extract of Dybo Deposition
Dybo

[9]

1
2 A Well, there are certain times he is supposed
3 to go down there and they hand him envelopes at a certain
4 time.

5 Q Who sets those times?

6 A The exchange.

7 Q The Stock Clearing Corporation?

8 A Right.

9 Q What other times, to your best recollection?

10 MR. DAVIDSON: If you know.

11 A Well, they have one before we even get in,
12 the night before. They drop it down there before we
13 even get in there.

14 There is one, I would say, probably around
15 ten o'clock, eleven thirty, twelve, around there. And
16 then we reclaim about two, two thirty.

17 Q Would you repeat that last one?

18 A A reclaim drop at two, two thirty.

19 Q Would you describe what a reclaim drop is.

20 A Any deliveries that we made out, which a
21 broker isn't accepting for some reason or another, he
22 sends it back for a reclaim drop.

23 Q Other than reclaim drops, is it correct that
24 the securities which you pick up from Stock Clearing or
25 picked up on a daily basis from Stock Clearing for Weis

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

Extract of Dybo Deposition
Dybo

[10]

1
2 were picked up prior to twelve thirty?

3 A Picked up? Yes, I would say by the latest
4 twelve thirty.

5 Q And then at about two thirty, you picked up
6 reclaimed -- a reclaim drop?

7 A Yes.

8 Q Apart from the times that are involved, was
9 this what generally happened with respect to picking up
10 securities while you were in the employ of other broker-
11 age houses?

12 A Right.

13 Q When you were in the employ of the other
14 brokerage houses, did you have occasion to deal with
15 Stock Clearing Corporation?

16 A Yes.

17 Q And did the procedure which you just des-
18 cribed for picking up securities, differ in any way?

19 A No.

20 MR. DAVIDSON: That's really only one
21 brokerage house in accordance with his prior
22 testimony, Philip Budin & Company was only an
23 over-the-counter house --

24 MR. JEROME: I thought there were two.
25 Are we on the record?

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 -- 267-2228

Extract of Dybo Deposition
Dybo

[12]

1
2 Q You were a receive and deliver clerk, were
3 you not, with F. M. Mayer & Company?

4 A Yes.

5 Q And with Budin?

6 A Yes.

7 Q And with Weis Securities?

8 A Yes.

9 Q Apart from the four brokerage houses we
10 have just described, do you serve as an employee for any
11 other brokerage house?

12 A No.

13 Q Well, just to clarify the record then, Mr.
14 Dybo, for how many years and I don't mean consecutively,
15 in total number of years that you spent as a receive and
16 deliver clerk, would you state that for the record?

17 A I would say five --

18 Q Five out of six?

19 A Right.

20 Q Coming back to the delivery of securities to
21 Weis by Stock Clearing and the daily transaction that
22 we talked about, when the envelope would come in to Weis
23 Securities from the runner, what happened to it?

24 A Well, it was given to me. If it was from
25 New York, it was given to me.

Extract of Dybo Deposition
Dybo

[13]

1 Q Would you explain what that means?

2 A Well, I took care of basically the physical
3 stock from the New York Stock Exchange, clearing house.

4 Q By that, do you mean Stock Clearing Corpora-
5 tion?
6

7 A Right.

8 Q The runner handed you the envelope, correct?

9 A Right.

10 Q What did you do with it?

11 A I took the stock out of each of the envelopes
12 and then proceeded to make sure the stock was in good
13 deliverable form and take copies of the delivery bills,
14 if we knew the trade.

15 Q How did you determine whether it was in good
16 deliverable form?

17 A First, I look at who's registered, turn it
18 over, make sure it is endorsed correctly, if anyone filled
19 out a power of attorney, make sure it's released, and
20 make sure guarantees, if there are any, and bank
21 signatures are guaranteed for a customer.

22 Q And did you keep a notation or memorandum or
23 list describing the securities that you received from
24 that envelope?

25 A Explain that a little bit more.

Extract of Dybo Deposition
Dybo

[29]

1 and advises Weis how much is owed to it?

2 A Not really. A lot of times, they don't know
3 until the last minute either. The systems are down quite
4 often, down there. Sometimes we already sent the money
5 and they call us up and they feel we should pay them \$200
6 more, \$2,000 more.
7

8 Q On May 24, 1973, did you receive a telephone
9 call from anybody from Stock Clearing Corporation stating
10 the amount of the check that was required to be sent to
11 Stock Clearing Corporation by Weis was?

12 A No, not the exact amount. Just that they
13 felt there was a check due them.

14 Q Do you know who made that telephone call?

15 A No, I don't.

16 Q Did you receive that telephone call?

17 A More than likely, I would say yes.

18 Q Do you recall the substance of the telephone
19 conversation?

20 A Just that they had wanted to know if we got
21 our figure yet, of what we should be paying them, because
22 is it going to be quite a large check and the time we
23 didn't know. We told them we hadn't come to a figure yet.

24 Q Had they told you yet, whoever they were, that
25 they had come to a figure?

Extract of Dybo Deposition
Dybo

[30]

1

2

A No.

3

Q Do you recall what time of the day this was?

4

A Not offhand. It was early, early afternoon.

5

Q How early -- well, let me ask it to you this

6

way.

7

Was it before the reclamation drop or after

8

the reclamation drop?

9

A I would say it would have to be after that.

10

Q And the reclamation drop is at two, two thirty?

11

A Right.

12

Q Which is it, two or two thirty, if you know?

13

A I believe it's two. I am not positive.

14

Q So it was some time after two o'clock?

15

A Right.

16

Q Was it before three o'clock?

17

A I would say yes.

18

Q At that point in time, had you picked up all

19

of the securities for the day for Wels from Stock

20

Clearing Corporation?

21

A Yes.

22

Q But you had not finished up tallying the

23

securities and the balance due, is that correct, when

24

you got that telephone call?

25

A Right.

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

N-2

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Prior to giving the Stock Clearing Corporation check for in excess of \$1 million to the runner on May 24, 1973, did you have occasion to give the runner checks for anybody else?

A Myself, no.

Q To your knowledge, did anybody else have occasion to give runners checks for anybody else?

A Not unless whoever handled the American gave them a check. I don't know that offhand.

Q When did you learn that Chemical would not certify a check, if you learned it?

A Late afternoon.

Q What time?

A After the reclaim drop.

Q Did you have any -- what did you learn?

A Just that Chemical supposedly, because of newspaper articles, had called our loans and they were freezing our accounts until straightened out.

Q I didn't quite understand the beginning of that answer about loans.

MR. DAVIDSON: Have the reporter read it back.

(The answer was read by the reporter.)

Q I don't quite understand that. Could you

M-3

1 elaborate on that answer a bit, please?

2
3 A Well, more or less, we draw a check, if
4 it is a large check, we take an overnight loan or
5 a day loan from the bank and we give them physical
6 stock as collateral until the next morning
7 until we send them another check and receive our
8 stock back. It's just an overnight loan. We pay
9 them interest on that.

10 Q And what about the newspaper article?

11 A It was just an article in the Daily News
12 that supposedly everyone around the Street was
13 talking about, about Weis being in trouble.

14 Q This was something you learned after
15 May 24, 1973?

16 A I don't -- I don't know exactly what day
17 it was. It was the day I believe.

18 MR. DAVIDSON: I think what Mr. Dybo was
19 trying to indicate by his testimony was that
20 it was his assumption that the Chemical had
21 taken whatever action it took in response to
22 having seen an article in the newspaper.

23 Q Was that your testimony?

24 A Yes.

25 Q What is the basis of that? Did anybody

Extract of Dybo Deposition

Dybo

[38]

1
2 tell you that, that was a fact?

3 A No, I assumed that what everybody else
4 was saying more or less.

5 Q When you say Chemical froze the account,
6 would you explain what you mean by that?

7 A Well, we had money down there but they
8 weren't certifying any of our checks. They were just
9 freezing the money. No money could move until what-
10 ever was decided.

11 Q When did you first learn about that on
12 May 21, 1973 that Chemical had frozen the account?

13 A I would say 2:30, 3:00. Late afternoon,
14 after the reclaim drop.

15 Q Did you know about it prior to giving
16 the runner the check that you gave him to be certified?

17 A I don't remember offhand.

18 Q Did Mr. Maddox or Mr. Gubitosi tell you
19 about Chemical's action on May 24, 1973?

20 A It was just said that they were not
21 certifying our check as at the moment. It was a
22 temporary thing.

23 Q Now, who said that, Mr. Maddox or Mr.
24 Gubitosi?

25 A I don't remember which one. They both

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

7

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q What time did you start work in the morning when you worked for Weis?

A A quarter to nine, nine o'clock.

Q On May 24, 1973, do you recall getting to your job at about a quarter to nine, nine o'clock ?

A Somewheres around that area.

Q Was there any gossip running around at your desk?

A No, it was just people more or less showing each other the article in the paper, supposedly about something Weis was having problems. I don't remember it offhand.

Q So far as you know, were any checks drawn on Chemical Bank in the morning of May 24, 1973?

A Me myself, I wouldn't say -- as far as I know, no. None of the ones I would have anything to do with would be drawn --

MR. DAVIDSON: Not necessarily the ones you had anything to do with. Any of the others?

A I wouldn't be able to say definitely yes or no. I just don't know.

Q Your best recollection then as I gather it, is that around noontime or thereabouts, you first began to hear the gossip about the action of

Extract of Dybo Deposition
Dybo

[44]

10

1
2 or not the securities that came in through the
3 pickup about twelve-thirty, involved a larger amount
4 of securities than had been earlier picked up?

5 Do you understand the question?

6 A Well, the whole morning was heavy. They
7 were all big pickups.

8 Q Well, would you say that the securities
9 that were picked up about twelve-thirty, were in
10 excess of a half million dollars?

11 MR. DAVIDSON: If you know.

12 Q If you know.

13 A I don't know definitely but I would
14 probably say could have been.

15 Q Is it your testimony, Mr. Dybo, that
16 your first conversation with anybody from Stock
17 Clearing Corporation on May 24, 1973 was after the
18 reclamation drop?

19 A I would say either just before it where
20 they knew there was going to be some kind of check,
21 but they didn't know. They were wanting us to hurry
22 it up. As soon as they did it, our reclaims sent a
23 check to them.

24 Q Can you place in terms of the time of
25 day the first telephone conversation that you had

Extract of Dybo Deposition

Dybo

[45]

11

1
2 on May 24, 1973 with anybody from Stock Clearing
3 Corporation?

4 MR. DAVIDSON: He's already answered
5 that question.

6 MR. JEROME: Not to my satisfaction.

7 MR. DAVIDSON: Well, he's answered it
8 to mine. He is not required to answer it and
9 it's been asked and answered before.

10 Q Do you understand the question, Mr. Dybo?

11 A Yes.

12 Q Can you answer it?

13 MR. DAVIDSON: I advise Mr. Dybo that he
14 is not required to answer that question and --

15 MR. JEROME: You need not accept that
16 advice, Mr. Dybo. This is not an adversary
17 proceeding.

18 MR. DAVIDSON: Other than the million
19 dollars.

20 A I couldn't give you a definite time.

21 Q When you had your first conversation
22 with somebody from Stock Clearing Corporation, did
23 you recognize the voice on the other end of the
24 telephone?

25 A No.

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

12

1 Q What is your best recollection of what
2 the voice said to you the first time it spoke to you
3 on May 24, 1973, that is, the voice from Stock
4 Clearing Corporation?
5

6 A That there was going to be a large check
7 due them and could we get it down there as soon as
8 possible because they wanted to receive the check.

9 Q And what did you say?

10 A We'll try, as soon as we could get the
11 figure we would send it down.

12 Q And between the time that you had that
13 conversation and the time that you gave the check
14 to the runner, did you have any other conversations
15 with anybody from Stock Clearing Corporation?

16 A I would say yes. A couple of times.

17 Q Do you know who you spoke to at Stock
18 Clearing Corporation?

19 A No, I don't. I spoke to a clerk originally
20 and they supposedly gave me to the vice president
21 in charge down there.

22 MR. JEROME: Would you read that answer,
23 Mrs. Reporter?

24 (The answer was read by the reporter.)

25 Q You spoke to a vice president?

Extract of Dybo Deposition

[47]

Dybo

13

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A Yes, because we had originally when we seen the amount, tried to get them to pair off the difference between the CCS and that and just pay us the difference, whatever it was at that particular time.

Q What is CCS?

A Central Certificate Services. It is a stock but not -- it is all paper.

Q What do you mean "pair off"?

A They owed us say a million "X" amount and we owed them -- Stock Clearing a million "X" amount, so we wanted to see if we could work the difference and just have the difference taken care of. Either they pay us a draft or whatever it was.

Q And you had a conversation with a vice president of Stock Clearing in respect of this?

A Yes.

Q Pairing?

A Yes.

Q And who was that: Do you know?

A I don't remember his name.

Q What did you say to him and what did he say to you, to the best of your recollection?

A Well, we had owed them a million, whatever

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

Extract of Dybo Deposition
Dybo

[48]

14

1
2 it was, and CCS had owed us and whatever. And we
3 had tried to find out if it was possible rather than
4 collecting a million something from CCS and paying
5 them a check for something, we would just pair off
6 the difference and collect from CCS whatever was
7 due us and have them work it themselves, as far as
8 giving each other the money.

9 Q And that's the substance of what you
10 said to him?

11 A Right, more or less.

12 Q And what did he say to you?

13 A He said that they didn't want to do it
14 that way because they were apart from each other now.
15 They were different companies, whatever it is. They
16 weren't, you know, together like they used to be.

17 Q And then what happened?

18 A And then we had tried to find out if we
19 could give them a check certified and we found out
20 that we couldn't.

21 I spoke to them and they wanted to know
22 could we give them back their stock.

23 We told them we had already used some
24 for deliveries so we wouldn't be able to give them
25 back all the stock they had or a certified check

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2221

Extract of Dybo Deposition
Dybo

[49]

15

1

2

so they said they would accept an uncertified check.

3

4

Q When you say you used some of the stock for deliveries, how had you determined that?

5

6

7

8

A Because as we were getting the stock in, we were turning around and giving it to our delivery man to either deposit down CCS or deliver through CCS or make a physical delivery.

9

10

Q And of the stock that you got in, how much did you deliver out?

11

12

A I wouldn't be able to tell you that offhand.

13

14

15

Q When you had the conversation with this vice president concerning pairing, what time of the day was that, do you know?

16

17

A Not offhand. I would say by that time it was past three.

18

19

20

Q And when you had a conversation concerning the return of the stock that you just testified to, what time was that?

21

22

A I would say that must be around the same period of time, not much before.

23

24

Q Was it during the same conversation that you talked about pairing?

25

A I would say could have been. I don't

Extract of Dybo Deposition
Dybo

[50]

16

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

remember definitely if it was or not.

Q When you received stock from Stock Clearing Corporation in behalf of Weis Securities on May 24, 1973, what specifically did you do with it, when you took it out of the envelope?

A When we took it out of the envelope we were looking for any large items to see if we could turn them back around to either deposit them in CCS and deliver them that way or make physical stock deliveries.

Q Did you do that in fact?

A Yes.

Q And do you know how much you did it with?

A No, I don't.

Q When you make deliveries out, do you expect to get paid cash for the securites that you deliver out?

MR. DAVIDSON: Object to the question.

Q You can answer it.

MR. DAVIDSON: This witness has not testified that he makes any deliveries out.

Q You are a receive and deliver clerk?

A Right.

Q You deliver out?

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

Extract of Dybo Deposition

[63]

Dybo

29

1
2 MR. DAVIDSON: Mr. Dybo, the time that
3 the girl would put on the list when she's
4 putting the deliveries into the system, would
5 be the time that she's physically making the
6 list; is that correct?

7 THE WITNESS: Yes. I think it cuts back
8 itself on the system itself, the girls putting
9 it on. I think it goes onto it, I am not
10 positive.

11 MR. DAVIDSON: In other words, the system
12 prints the time simultaneously with her printing
13 the information?

14 THE WITNESS: Right.

15 MR. DAVIDSON: So that would be sometime
16 after the pickup made by Weis?

17 THE WITNESS: Right.

18 MR. DAVIDSON: Off the record.

19 (Discussion off the record.)

20 BY MR. JEROME:

21 Q I think we have described two or three
22 of your conversations with people from Stock Clearing,
23 Mr. Dybo.

24 In particular, you had a conversation
25 with somebody at Stock Clearing concerning the

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

Extract of Dybo Deposition
Dybo

[64]

30

1
2 inability of Weis to obtain certification of Stock
3 Clearing's check; is that correct?

4 A Right.

5 Q Do you recall when you had that conver-
6 sation?

7 A No. It would have to be like I said,
8 after three.

9 Q Was it during that conversation, that
10 you asked somebody from Stock Clearing to pair?

11 A I would say it would probably be more
12 than likely.

13 Q And was it during that conversation,
14 that you advised somebody from Stock Clearing that
15 you were unable to return its stock because of the
16 turnaround?

17 A I don't remember offhand. Possibly or
18 otherwise conversations just before it. I --

19 MR. JEROME: You want to correct the
20 record on something, Mr. Kasen?

21 MR. KASEN: Yes.

22 His testimony I do not believe was that
23 there was inability to return all the stock.
24 He simply said that there had been a turnaround
25 with respect to some of the stock.

Extract of Dybo Deposition
Dybo

[65]

31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q And you didn't specify how much?

A No, because I didn't know how much.

Q Do you know whether or not the turnaround was less than \$700,000?

A No, I wouldn't know offhand.

Q When you had the conversation concerning the certification, do you know who you were talking to?

A Excuse me?

Q Do you know who you were talking to at Stock Clearing?

A No, not offhand. I had written down all the names but --

Q Was it a vice president, do you recall that?

A About the certification? Yes.

Q It was a vice president?

A Started off with a clerk. He said hold on and some other gentleman came on and said he was a vice president in charge under something and --

Q Does the name Petroski ring a bell with you?

A No.

Q So the man you spoke -- you first spoke to a clerk and the second person you spoke to was brought to the phone by that clerk?

A Right.

Extract of Dybo Deposition
Dybo

[66]

32

1
2 Q Did you speak to a third person?

3 A No. After that, any time I spoke, I
4 spoke to the man who said he was a vice president.

5 Q Does the name Fuchs mean anything to you?

6 A Not offhand.

7 Q Hoyt?

8 A I've heard some of the names before but
9 I don't know if it's in regards to this.

10 Q In any event, you only spoke to two
11 people at Stock Clearing Corp.; is that correct?

12 A As far as I remember, yes.

13 Q Concerning the question of certification,
14 did you, when you spoke to the clerk, that is to say,
15 the first person, do you recall what you said to
16 that person?

17 A Not offhand. Not offhand. Just that we
18 couldn't get it certified at the time because Chemical
19 was freezing our accounts temporarily until whatever
20 decision was made. We didn't know how long it would be.

21 Q You used the word "temporarily"?

22 A Yes.

23 Q And what did he say to you?

24 A Well, he didn't know what to do more or
25 less. That's why he went and called whoever he

1
2 called.

3 Q And that person who he called, you think
4 was a vice president?

5 A He said he was.

6 Q And you're sure that there wasn't a
7 third person that you spoke to?

8 A I don't remember offhand a third one.

9 Q You don't remember a third one?

10 A No.

11 Q What did you say to the second person
12 from Stock Clearing who got on the telephone?

13 A More or less first I explained to him
14 that at the moment we couldn't get our check certi-
15 fied because Chemical had frozen our accounts and,
16 you know, could we pair off the CCS with that, and
17 he said no at the time.

18 Q Because they were separate corporations,
19 is that what he told you?

20 A Yes.

21 Q Did you use the word temporarily?

22 A I told him -- well, he had asked do we
23 know how long it would be, and I said no, it was as
24 far as we knew, temporary until whatever decisions
25 were made. Nobody knew nothing definite yet.

1

2

Q Yet, what decision were you referring to?

3

4

A Anything in regards to whether we were going to do business, freeze our accounts or what was going to happen. It was still up in the air as far as we knew.

5

6

7

Q And what did he say to you, to the best of your recollection?

8

9

A Well, at the end, he said send down an uncertified check and they would hold on to that to see what the outcome was.

10

11

12

13

Q Did he tell you that in the same conversation or did he say he would call you back?

14

15

A I think he called us back if I am not mistaken.

16

17

Q This is the second individual that you spoke to?

18

19

20

A Right.

21

22

23

24

25

Q And when he called you back, what did he say?

A I believe he said just send down a check and I don't remember if he said to send a draft or what. He held our draft also. Our draft from CCS. He said they would hold both until the outcome. So they were covered. They had the same money, if not

Extract of Dybo Deposition
Dybo

[69]

15 1
2 more.

3 He said after whatever came out, then
4 it would be taken care of one way or the other.
5 Either we would receive or we would still owe them.

6 Q Did you have any further conversations
7 besides those conversations that you have testified to?

8 A Just more or less called back this man
9 to find out if we explained decisions yet about our
10 draft and the check --

11 Q You called him or he called you?

12 A I called him back at least one or twice
13 before the day ended. The end of the day it was
14 still up in the air. They had our draft --

15 Q So you called him back a couple of times
16 and --

17 A He wasn't sure either. He was waiting
18 for something else.

19 Q But he finally did call you back and say
20 send your check?

21 A No, we had sent them a check before the
22 end of the day I believe. We sent it down and he
23 held the check and we made up for our own record a
24 suspension for overnight until we found out what
25 happened.

Extract of Dybo Deposition

Dybo

[70]

36

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q You called this second person up after you had sent the check for a million and seven down?

A Right. I would say later on in the day whether any decision had been made, whether they were going to pay a draft and accept our check or pair it off and do whatever they were going to do.

Q You're talking about the CCS money?

A Right, due us.

Q Had you on prior occasions paired CCS moneys owed by CCS against moneys which you owed to Stock Clearing Corp.?

A I would say not recently. A while back like last year or the year before whatever it was, it use to be on the same sheet. It was just one -- because this new thing they started, two separate sheets.

Q Do you recall whether you had sent a check to Stock Clearing Corp. on May 23, 1973, the day before all of this trouble?

A I don't know offhand if we paid them.

Q Did you indicate in your conversation with the second person from Stock Clearing with whom you spoke, that there were moneys in the bank to cover the check?

MANHATTAN REPORTING CORP.

132 N. 54TH STREET NEW YORK 10038 - 267-2228

Extract of Dybo Deposition
Dybo

71

37

1
2 A I told him that there was supposedly
3 enough money in the bank. It was just that the
4 bank wasn't letting us touch anything or certify
5 our checks at the moment. They didn't know how
6 long it would be.

7 Q Is that all you said to him with respect
8 to moneys in the bank?

9 A That's right. That there was enough to
10 cover the amounts we owed them, it was just a matter
11 of the bank not certifying the checks.

12 Q Did you in any way indicate to him that
13 he should accept the check because there was suf-
14 ficient moneys in the bank?

15 A No.

16 Q What was the purpose of your telling him
17 there was sufficient moneys in the bank?

18 A Because he had -- I don't remember if
19 he had asked or how the conversation came on, about
20 if that was one of the reasons why they weren't
21 certifying our checks, was there enough money to
22 cover the check down there.

23 MR. JEROME: Would you read back the
24 answer.

25 (The answer was read by the reporter.)

38

1
2 Q And you said, I gather, that there was
3 sufficient moneys?

4 Did you talk to any of your supervisors
5 regarding this check that could not be certified?

6 A I believe I spoke to Marshall or Joe or
7 both.

8 Q Do you recall the conversation that you
9 had about it with them?

10 A Not offhand. Just that what to do about
11 it more or less. They said first try to pair it off
12 with them if possible, that if they didn't want to
13 do it that way, it came out that they wanted the
14 check certified. They said, all right, just send
15 them the check. The funds were there. The check
16 would be good whenever the bank decided to release
17 funds. So he said all right, we'll send you down
18 a check.

19 Q Had you advised either Mr. Maddox or
20 Mr. Gubitosi of the request by Stock Clearing for
21 return of their stock?

22 A Right. I believe I mentioned it and
23 they had said they couldn't give them back all the
24 stock because certain stock had been used, turned
25 around.

Extract of Dybo Deposition

Dybo

[73]

39

1
2 Q What about the stock that hadn't been.
3 Do you know why that wasn't returned?

4 A As far as I know after we told him that
5 we couldn't return it all, they had decided that they
6 wanted the check, if we couldn't return all the
7 stock, they wanted the check.

8 Q Had you ever had occasion in your
9 capacity as a receiving and deliver clerk to have
10 to return stock under circumstances similar to this?

11 A To the house, you mean? No.

12 Q Where are you employed now Mr. --

13 A I'm not.

14 MR. DAVIDSON: I would like to ask one
15 question on redirect.

16 REDIRECT EXAMINATION BY MR. DAVIDSON:

17 Q In your experience with Weis Securities,
18 were there occasions from time to time when checks
19 would be paid to Stock Clearing Corporation the day
20 after a settlement date when it turned out there is
21 a discrepancy between the amount of the check paid
22 the day before and the amount owing to Stock Clearing
23 Corporation?

24 A Money difference?

25 Q Yes.

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 -- 267-2228

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SECURITIES INVESTOR PROTECTION CORPORATION, :

Applicant, :

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-against- : INDEX NO.
73 Civ. 2332

WEIS SECURITIES, INC., :

Defendant.

-----X
STOCK CLEARING CORPORATION, :

Plaintiff, :

-against- :

WEIS SECURITIES, INC.. and EDWARD S.
REDINGTON, as Trustee of WEIS SECURITIES, INC., :
Defendants.

-----X

Deposition of DAVID F. HOYT, taken by
defendants pursuant to agreement, at the offices
of Messrs. Hughes, Hubbard & Reed, One Wall Street,
New York, New York, on November 6, 1974, at 2:20 p.m.
before David J. Feldman, a Certified Shorthand
Reporter and Notary Public within and for the
State of New York.



Certified Shorthand Reporters

ALL-AMERICAN
REPORTING CORP

Extract of Hoyt Deposition

[2]

A P P E A R A N C E S :

Messrs. HUGHES, HUBBARD & REED
Attorneys for Trustee Edward S. Redington
One Wall Street
New York, New York

BY: GEORGE DAVIDSON, ESQ.,
-and-

ALLAN J. KASEN, ESQ.,

of Counsel

Messrs. MILBANK, TWEED, HADLEY & McCLOY
Attorneys for Plaintiff Stock Clearing Corporation
One Chase Manhattan Plaza
New York, New York

BY: JOHN J. JEROME, ESQ.,
LANA BORSOOK, ESQ.,

-and-

THOMAS A. WILLIAMS, ESQ.,

of Counsel

-oOo-

IT IS HEREBY STIPULATED AND AGREED,
by and between counsel for the respective
parties hereto, that the signing of the
within deposition shall be and the same
hereby is waived.

-oOo-

Extract of Hoyt Deposition

3

1
2 D A V I D F. H O Y T, residing
3 at 1981 Lenox Avenue, East Meadow, New York,
4 having been duly sworn by the Notary Public
5 (David J. Feldman, CSR), was examined and
6 testified as follows:

7 EXAMINATION BY MR. DAVIDSON:

8 Q Mr. Hoyt, by whom are you employed?

9 A Stock Clearing Corporation.

10 Q For how long have you been employed
11 by Stock Clearing Corporation?

12 A Eighteen years.

13 Q What is your job title?

14 A Secretary.

15 Q For how long have you been secretary
16 of Stock Clearing Corporation?

17 A Approximately a year and a half.

18 Q Are you an officer of any other corporation?

19 A No.

20 Q In 1973 were you an officer of any
21 other corporation?

22 A No.

23 Q What was your job title at SCC prior
24 to your becoming secretary?

25 A Director.

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

Extract of Hoyt Deposition
Hoyt

4

1
2 Q Were you a member of the board of
3 directors of SCC?

4 A No.

5 Q And were you a director of Stock
6 Clearing Corporation in May of 1973?

7 A Was I --

8 Q Were you a director in May of 1973?

9 A Yes.

10 Q What were your duties as director of
11 Stock Clearing Corporation?

12 A I worked on special projects that the
13 Clearing Corporation was developing.

14 Q Did you have any duties other than
15 working on special projects?

16 A When?

17 Q In May of 1972.

18 A Yes.

19 Q What were those duties?

20 A Corporate secretary.

21 Q To whom did you report when you were
22 director of SCC in May of 1973?

23 A There were several people I reported to.

24 Q Who were they?

25 A Samuel A. Gay. Diran Kaloostian.

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

Extract of Hoyt Deposition
Hoyt

5

Those are the people I directly reported to at the time.

Q What was Mr. Gay's job title in May of 1973?

A He was on the board of directors of Stock Clearing Corporation.

Q Did Mr. Gay have any office in Stock Clearing Corporation?

By that I mean, corporate office such as vice president or something of that sort.

A When?

Q In May of 1973.

A No.

Q What was Mr. Kaloostian's job in Stock Clearing Corporation in May 1973?

A Executive vice president.

Q Do you know whether in May 1973 Mr. Gay had any position with the New York Stock Exchange?

A Yes.

Q What was that position?

A Don't know the exact title.

Q Can you give me your best recollection of what that position was?

A Best recollection, senior V.P.

Extract of Hoyt Deposition

Hoyt

[6]

1
2 Q Do you know of any other corporate
3 offices in any other corporation which Mr. Kaloostian
4 held in May 1973 other than executive vice president
5 of Stock Clearing Corporation?

6 A Yes.

7 Q And what were those?

8 A He was the president of CCS, Inc.

9 Q Do you recall attending a meeting on
10 the morning of May 24, 1973, regarding Weis Securities?

11 A Yes.

12 Q And where was that meeting held?

13 A At the New York Stock Exchange.

14 Q Do you recall at what time the meeting
15 commenced?

16 A No.

17 Q Was it before eleven a.m.?

18 A Yes.

19 Q Who was present at that meeting?

20 A Officers of Weis Securities and
21 Exchange officers. Counsel for the Exchange.

22 Q Can you tell us in substance what was
23 said at that meeting?

24 A The Weis Securities situation was being
25 discussed from a regulation and surveillance standpoint.

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

Extract of Hoyt Deposition

Hoyt

9

1
2 the subject of meeting.

3 That was a general question.

4 MR. JEROME: Do I understand the
5 question to mean then instructions at any time
6 during May 24, 1973?

7 MR. DAVIDSON: Right.

8 A No.

9 Q Prior to May 24th, had you attended
10 any meetings in regard to Weis Securities?

11 A No.

12 Q Following your meeting at the New York
13 Stock Exchange on the morning of May 24th, did you
14 have any meetings regarding Weis Securities later that
15 day?

16 A Yes.

17 Q How many such meetings did you have?

18 A At least two.

19 Q When did the first such meeting take place?

20 A Approximately four o'clock.

21 Q Who was present at the four o'clock
22 meeting?

23 A David Fuchs.

24 Q Anyone else?

25 A To the best of my knowledge, no.

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

Extract of Hoyt Deposition
Hoyt

10

1 Q Who originated your meeting with Mr. Fuchs?

2 A Don't recall.

3 Q What was said at your meeting with
4 Mr. Fuchs?

5 A I was informed that a check, uncertified,
6 was received from Weis.

7 Q Did you say anything to Mr. Fuchs?

8 MR. JEROME: Excuse me. I think the
9 question assumes, does it not, that he was
10 informed by Mr. Fuchs. I think that's the case --

11 MR. DAVIDSON: He's already testified
12 that only he and Mr. Fuchs were at the meeting.

13 MR. JEROME: He could have gotten a phone
14 call while he was at the meeting.

15 I think we ought to have the record
16 clear that he was informed by Mr. Fuchs.
17 Then we can proceed with the question.

18 Q Did you have any phone calls at the
19 meeting?

20 MR. JEROME: Let me ask a question.
21 Did this information you just testified
22 to come from Mr. Fuchs at the meeting?

23 THE WITNESS: Yes.

24 Q Did you receive any phone calls during

25 MANHATTAN REPORTING CORP.

Extract of Hoyt Deposition
Hoyt

[11]

1
2 your meeting with Mr. Fuchs?

3 A I don't recall.

4 Q Did Mr. Fuchs receive any phone calls
5 during that meeting?

6 A I don't recall.

7 Q Did you say anything to Mr. Fuchs
8 at the meeting?

9 A Yes.

10 Q What did you say to Mr. Fuchs?

11 A I asked for details.

12 Q What did Mr. Fuchs tell you?

13 A That he had been in contact with the
14 Settlement Department. Mr. Stanley Petroski
15 of the Settlement Department.

16 Petroski had been in contact with
17 Weis' office, and had been told that -- told by Weis
18 personnel -- that Chemical Bank had frozen Weis'
19 bank account. And that Weis couldn't certify.

20 Q Did Mr. Fuchs tell you anything else?

21 A That's all that I can recall.

22 Q Prior to your meeting with Mr. Fuchs,
23 had any information come to your attention concerning
24 the freezing of Weis' bank account?

25 A No.

Extract of Hoyt Deposition

Hoyt

18

1
2 A That's all.

3 Q Is it correct that SIAC is a corporation
4 which performs services for SCC?

5 A Yes.

6 Q Do you know whether those services are
7 performed pursuant to a written contract?

8 A No.

9 Q Do you know of any writing which sets
10 forth the substance of any of the meetings or
11 telephone conversations to which you've previously
12 testified?

13 MR. JEROME: Just a minute, please.

14 You may answer the question.

15 A Yes.

16 Q How many such writings are you aware of?

17 MR. DAVIDSON: Let the record show
18 that Mr. Jerome has just supplied the
19 witness with a two-page document, purporting
20 to be a memorandum from Mr. Hoyt to Mr. Gay,
21 dated June 1, 1973.

22 The pending question was how many
23 such writings were you aware of?

24 A Three. This one and two others.

25 Q I ask you to compare the document which

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

Extract of Hoyt Deposition
Hoyt

25

1
2 A No.

3 Q Are you aware of any discussions at
4 SCC concerning the possibility of asking Weis
5 to return securities received by it on May 24th?

6 And I'm limiting myself to discussions
7 taking place in May 1973.

8 A No.

9 Q You mentioned previously that Mr. Gay
10 was a member of the board of directors of SCC
11 in May of 1973.

12 Do you recall who other members of the
13 board were at that time?

14 A John J. Mulcahy, Eugene Miller, James
15 Needham, Francis Palamara.

16 Q Do you believe there are others?

17 A Can you read back who I gave you?

18 Q You named Gay, Mulcahy, Needham and
19 Palamara.

20 A Donald Regan, Diran Kaloostian.

21 Q Mr. Needham was president of the Exchange
22 at that time; was he not?

23 A No.

24 Q Do you know what his position at the
25 Exchange was at that time?

Extract of Hoyt Deposition

Hoyt.

[26]

1
2 A Chairman of the board.

3 Q Did Mr. Mulcahy have an office at
4 the Exchange at that time?

5 A Yes.

6 Q What was his office?

7 A I don't know.

8 Q What about Mr. Miller?

9 A Vice president.

10 Q Mr. Palamara?

11 A Executive vice president of the Exchange.

12 Q Mr. Regan?

13 A Outside director.

14 Q Outside director of the Exchange?

15 A Stock Clearing.

16 Q Just Stock Clearing?

17 A Yes.

18 Q Did Mr. Kalcostian have any office
19 with the Exchange or did he just have the SCC and
20 CCS offices to which you previously testified?

21 A To the best of my knowledge he had
22 SCC and DTC or CCS offices.

23 Q Regarding the meeting at the Exchange on
24 the morning of May 24th, were any of the individuals
25 whom you've identified as members of the Stock

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

Extract of Hoyt Deposition
Hoyt

[27]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Clearing Corporation board present at that meeting?

A Francis Palamara.

Q Are you familiar with the requirement and Stock Clearing rules that checks payable to Stock Clearing in the amount of 5,000 or more are required to be certified?

A Yes.

Q And the further provision that Stock Clearing Corporation may elect to waive that requirement of certification?

A Yes.

Q Do you know who at Stock Clearing Corporation has authority to waive the certification requirement?

A When?

Q In May of 1973.

A The board of directors.

Q Do you know whether the Stock Clearing board of directors took any action with regard to waiving the certification requirement in respect of the check delivered by Weis Securities to Stock Clearing Corporation on May 24, 1973?

A They did not.

Q Do you know whether anyone at Stock Clearing Corporation purported to waive the requirement

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10036 267-2228

Extract of Hoyt Deposition

Hoyt

[34]

1 shut me up, because that did it.

2 Maybe I should just ask the witness
3 if he has any objections he wishes to add to
4 those set forth by counsel to the description
5 in Defendant's Exhibit 1.
6

7 THE WITNESS: None to add.

8 BY MR. DAVIDSON:

9 Q Mr. Hoyt, turning again to the meeting
10 at the New York Stock Exchange on the morning of
11 May 24th, was one of the subjects discussed at that
12 meeting the possibilities for keeping the Weis
13 Securities brokerage house in operation in the future?

14 A Yes.

15 Q And at that time were various
16 possibilities for keeping Weis opened discussed?

17 A Don't recall.

18 Q Do you recall whether the possibility
19 of liquidating Weis Securities was discussed at
20 the ten a.m. meeting at the Exchange on May 24, 1973?

21 A I don't recall.

22 MR. DAVIDSON: I have no further questions
23 of Mr. Hoyt.

24 (Time noted: 4:00 pm.)
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter
of
WEIS SECURITIES,
Debtor.

No. 73 CIV. 2332

United States Court House
Foley Square, New York, N.Y.

January 15, 1975
10:30 o'clock a.m.

STOCK CLEARING CORPORATION HEARING

Before:

HON. ROY BABITT.

Bankruptcy Judge

BARRY W. RAYVID
Official Court Reporter
U.S. Courthouse (R. 230)
Foley Square, New York, N.Y. 10007

1
2
3 THE COURT: Then, I have various
4 stipulations which don't bear, but I do have
5 one stipulation of December 3rd, that was
6 filed with me in which, I take it, these are
7 the controlling material facts or are there
8 any other material facts as to which I will
9 need evidence?

10 MR. DAVIDSON: Your Honor, I believe
11 that's the complete record.

12 THE COURT: In other words, if I under-
13 stand you fellows, and madam, we have got a
14 summons and complaint, and, I take it,
15 basically a motion for summary judgment by
16 both sides?

17 MR. JEROME: That's right, Your Honor.

18 THE COURT: The answer raises what
19 appears to be some questions of law as to
20 waiver, right? But you also, in the first
21 affirmative defense, claim that Mr. Jerome's
22 complaint fails to state a cause of action,
23 right?

24 MR. DAVIDSON: That's right, Your
25 Honor.

THE COURT: So, if I take that affirma-

Extract of Transcript of Record of Proceedings

[4]

1 tive defense - - if I ignore the denials
2 in the answer, there are no longer any issues
3 of fact, and I take your first affirmative
4 defense and treat it as a Rule XII demurrer
5 converted to a motion for summary judgment,
6 right?

7 MR. DAVIDSON: Yes, Your Honor.

8 THE COURT: And, I could grant summary
9 judgment to either side, either dismiss the
10 complaint or grant the relief sought by the
11 complaint under Rule 56, is that correct?

12 MR. DAVIDSON: That's correct.

13 THE COURT: Then all we have, then, are
14 straight questions of law. All right.

15 Well, I guess, Mr. Jerome, maybe since
16 you brought the action and it's your complaint
17 which is in dispute, supposing I let you
18 argue first?

19 MR. JEROME: I will be happy to, Your
20 Honor. Your Honor, in this reclamation pro-
21 ceeding, our proceeding, The Stock Clearing
22 Corporation seeks to recover one million one
23 hundred thirty-five thousand dollars of
24 securities which were sent to Weis by the
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In the Matter :
-of- :
WEIS SECURITIES, INC., :
Debtor. :

-----x

STOCK CLEARING CORPORATION, :
Plaintiff, :
-against- :
WEIS SECURITIES, INC. and EDWARD S. :
REDINGTON, as Trustee of Weis :
Securities, Inc., :
Defendants. :

73 Civ. 2332

OPINION

FILED

JUN 13 1975

ROY BABITT
BANKRUPTCY JUDGE

203

-----x

APPEARANCES:

HUGHES HUBBARD & REED, ESQS.,
By: GEORGE A. DAVIDSON and
ALLAN J. KASEN, Esqs.,
Of Counsel
Attorneys for Defendant

MILBANK, TWEED, HADLEY & McCLOY, ESQS.,
By: JOHN J. JEROME
THOMAS A. WILLIAMS and
LANA BORSOOK, Esqs.,
Of Counsel
Attorneys for Plaintiff

Opinion of Babitt, J.

ROY BABITT, Bankruptcy Judge:

On May 20, 1974, the Stock Clearing Corporation (SCC) filed this complaint alleging that it was entitled to a certain escrow account held by Edward S. Redington, (Trustee), as Trustee of Weis Securities, Inc. (Weis).^{1/} The parties agreed upon the controlling facts and they are set out in the stipulation approved by this court on December 3, 1974. The complaint also contained a second cause of action grounded in fraud, but that cause has been dismissed with prejudice by stipulation.

On May 24, 1973, an appropriate application was filed instituting proceedings against Weis within the purview of the Securities Investor Protection Act of 1970 (SIPA), 15 U.S.C. §§ 78aaa, et seq. As part of such proceedings, the defendant, Edward S. Redington, was appointed Weis' Trustee on May 30, 1973.

On June 15, 1973, SCC obtained from this court an

^{1/} The SCC, as plaintiff, followed the adversary proceeding route now prescribed by Part VII of the Bankruptcy Rules, 411 U.S. 1068, effective on October 1, 1973.

Opinion of Babitt, J.

Order to Show Cause requiring the Trustee to show cause why an order should not be entered directing him to account to SCC for the securities Weis received from SCC on May 24, 1973 under circumstances to be described below. In addition, SCC sought to enjoin the Trustee from disposing of such securities until its rights in such securities were determined; SCC also sought to obtain information as to the identity of the securities involved.

By a stipulation between SCC and the Trustee, approved by this court on July 3, 1973, the Trustee agreed to place the sum of \$1,135,459.87 in escrow. In return, SCC was granted the right to proceed by reclamation to procure said sum in lieu of seeking to recover the actual securities delivered by it to Weis on May 24, 1973.

The amount SCC seeks is the escrowed fund of \$1,135,459.87, made up principally of the net cash payment alleged to be due to SCC for the stock it delivered to Weis on May 24, 1973, and for which it received Weis' check. That check was duly deposited by SCC for collection but it was returned by Weis' bank on May 25, 1973, for insufficiency of funds.

Opinion of Babitt, J.

SCC is a New York corporation whose function is to provide facilities for clearing and for settling transactions, involving securities between and among members of the New York Stock Exchange, Inc. (N.Y.S.E.) and other brokers for whom SCC may act. SCC is itself a subsidiary of the N.Y.S.E. Its facilities are used as a central conduit by the brokers. In placing buy and sell orders, a broker, typically, would arrange to have his buy order placed in his pick-up spot and to have his sell orders placed in the pick-up spot of the respective buying broker. In this fashion, the exchange of numerous stock certificates among many brokers is expedited. Thus, to structure the usual process, if broker X wishes to sell 100-shares of a certain stock to broker Y, and the sale-purchase is concluded, broker X would deposit the stock in an envelope with the SCC whose clerks would then put that envelope in a bin for broker Y to pick up.

In addition to this clearing operation, the participating brokers utilize SCC to collect payment for the stock sold. This is accomplished by determining each firm's

Opinion of Babitt, J.

receipt of stock less the delivery of stock as an aggregate from all of the brokers. If the receipts were to exceed the deliveries on any given day, then the firm would be obliged to pay SCC the balance. However, the SCC pays those firms that delivered more stock than they received. Thus, if broker X were to deliver \$100 worth of stock to numerous brokers through the SCC, but ^{was} ~~was~~ to receive a total of only \$50, rather than settling his accounts with each individual broker that he dealt with; broker X could net his activities for the day in the aggregate. He could therefore look to payment from SCC in the sum of \$50 in the example above.

Weis was a broker-dealer and a member of the N.Y.S.E. On May 24, 1973, Weis received securities and other items in the dollar amount of \$1,909,093.66 computed in accordance with applicable rules. In addition, Weis delivered items in the amount of \$782,928.59 to SCC to be picked up by other members of SCC on that day. (Pg. 2, Stipulation.)

In keeping with the financial results of that day's dealings, Weis issued its uncertified check to SCC in the

Opinion of Babitt, J.

amount of \$1,135,459.87. That amount represented the difference between the amounts debited to Weis' SCC settlement account, for N. Y. State Transfer taxes paid together with the picked-up items and the amounts credited to Weis' SCC settlement account for the brought-in items. While the usual manner of business called for Weis to pay by certified check, at approximately 4:00 P.M. on May 24, an officer of SCC decided to accept Weis' uncertified check for that day's settlement cause the bank had frozen Weis' account (Pet. Ask. Dep: p. 45). On May 25, 1973, SCC learned that Weis' check would not be honored.

The issue before this court is whether, on these facts, SCC has a right in preference to all other creditors, including securities customers, to be made whole by obtaining property from Weis' Trustee equal in value to Weis' debt to SCC based on the dishonored check. It is this court's judgment, notwithstanding these appealing facts, that the SCC does not have such right to be made whole.

In determining the status of SCC's claim, I start with the statute, although I may not end there, F.T.C. v. Bunte Bros., 312 U.S. 349 (1941) at 350.

Opinion of Babitt, J.

And so I turn to the relevant provisions of SIPA. Manifestly, the provisions relating to "customers" and "cash customers" are inapplicable in this dispute. Sections 6(c)(2)(A) and (B), 15 U.S.C. §§ 78fff(c)(2)(A) and (B). In SIPA, Congress' main impulse was the "protection of the customer as investor and trader, not to protect others who might become creditors of the broker-dealer for independent reasons." S.E.C. v. F. O. Baroff Co., Inc., 497 F.2d 280 (2d Cir. 1974). Clearly, the SCC is neither customer nor investor and thus not within the classes for whom Congress meant to be solicitous in the 1970 legislation. Accordingly, if SCC is to succeed in this suit, it must find a legal basis elsewhere.

Although this case and this court's jurisdiction, Exchange National Bank of Chicago, et al., v. Wyatt, et al., 524 F.2d (2d Cir. 4/24/75), arose under SIPA, that statute makes applicable the provisions of the Bankruptcy Act "except as inconsistent with the provisions of this Act." Section 6(c)(1), 15 U.S.C. §§ 78fff(c)1. Therefore, the validity of SCC's claim should be considered within the

Opinion of Babitt, J.

context of the Bankruptcy Act and the gloss given its relevant provisions in respect of a suit such as this against a Trustee.

The rule is settled that the property of a third person in the possession of the bankrupt, where proper proof of valid title is shown by the claimant, is not to be included in the assets of the bankrupt's estate, but is to be restored to the claimant. 4A Collier on Bankruptcy (14th ed.) ¶ 70.39[1] at 467. This rule, as the linchpin of a suit for reclamation, is not inconsistent with the provisions of SIPA and should be applied if the proper elements are shown and that conclusion follows.

A suit for reclamation is an outgrowth of replevin suits. Thus, a petitioner seeking recovery must show such facts as would be sufficient to sustain an action in replevin. General Phonograph Corp. v. Fanning, 6 F.2d 115, 116 (3d Cir. 1925). That remedy is only available where

"personal property is clearly identified and has been delivered to, but where title has not passed to, a bankrupt."

In re Broomhall, Killough & Co., 61 F.2d 760, 761 (2d Cir. 1932).

Opinion of Babitt, J.

In order to prevail in its reclamation suit, SCC has the burden of proof. It must show facts sufficient to establish that the claim to possession is superior to the prima facie right of the trustee. National Silver Co. v. Nicholas, 205 F.2d 52, 55 (5th Cir. 1953). Moreover, SCC must succeed . . .

"only on the strength of his own right to the property . . ." and not on the " . . . weakness of that of the bankrupt or the trustee. . . ."

Robbins v. Bostian, 138 F.2d 622, 625 (8th Cir. 1943).

The nature of the ownership can be either absolute or qualified. Allen v. Lokey, 307 F.2d 353, 354 (5th Cir. 1962) citing 4A Collier on Bankruptcy (14th ed.) ¶ 70.39(1) at 467. However, the petitioner must prove ownership, and it is on this element that SCC's case founders. Although SCC acquired some claim against Weis by virtue of the transactions described, SCC's claim does not rise to the level of ownership of the stock. The record clearly shows that SCC merely acted as a clearing house. At no time before Weis picked up the stock could SCC have insisted upon retaining possession of the stock. SCC had no claim to own

Opinion of Dabitt, J.

them. Therefore, it is difficult to justify the present

demand for return based on mere possession without any rights of dominion.

It is admittedly, SCC gained some property interest in the property the stock by virtue of its payment to the respective delivering brokers. However, the facts fail to justify the existence of anything more than an interest in the nature of a lien, while the theory underlying reclamation rests upon restoration of an ownership which had never been fully relinquished.

In re Broomhall, Killough & Co., 61 F.2d 760 (2d Cir. 1932).

Reclamation fails where there was never any ownership of the stock.

An examination of SCC's own rules supports this result. Rule 13 provides that SCC "... shall have a lien on any and all securities and other property held by it at any time or from time to time ... for all amounts due." CCH N.Y.S.E. Guide, SCC Rule 13, ¶ 3313, pg. 4627. The language of the rule supports the view that SCC's interest does not rise to the level of ownership, but merely gives the SCC a lien, already seen to be insufficient to support a right of reclamation.

Opinion of Babitt, J.

SCC also contends that its suit is proper for, it argues, it had the rights of a bailee and thereby possessed indicia of ownership, principally the right to possession. Support is claimed in Bradley v. St. Louis Terminal Warehouse Co., 189 F.2d 818 (8th Cir. 1951), but the language of that case limits a right to reclaim property based on such theory "... where it is wrongfully seized by another." 189 F.2d at 823-824, an element which, none will dispute, is absent here.

Moreover, a bailee loses the right to reclaim where the bailment is lawfully terminated and while the usual method of terminating a bailment is redelivery of the property to the bailor, a bailment can also terminate "when specific direction is given by the bailor to deposit the property at a particular place and to leave it there. . . ." Mays v. New York, New Haven & H.R.R. Co., 197 Misc. 1062, 1064, 97 N.Y.Supp. 2d 909, 912 (App. Term, 1st Dept. 1950). Here, the stock was given to SCC to be held until picked up by Weis in keeping with the custom and practice. The bailors neither sought nor expected redelivery. On the contrary, Weis was expected to pick up the stock in keeping with the

Opinion of Babitt, J.

custom of the trade. In essence, SCC was merely a convenient, temporary shelter for the securities until Weis' messenger physically took them up as was indeed done. If a bailment there was, it then terminated, as the bailors and everyone else, including SCC contemplated. Therefore, the Bradley case is inapplicable for this reason, as well, simply because the stock was never "wrongfully seized" by Weis. Once SCC voluntarily transferred the stock to Weis pursuant to the way things were done, it lost its right to reclaim the stock as a bailee in possession.

SCC's suit for reclamation must fail and, accordingly, the complaint seeking such relief must be dismissed. It is so ordered.

Dated: New York, New York
June 13, 1975.

Roy Babitt
Bankruptcy Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
IN THE MATTER
OF
WEIS SECURITIES, INC.,

Debtor.

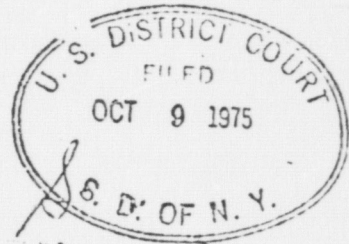
STOCK CLEARING CORPORATION,

Appellant

vs.

WEIS SECURITIES, INC. and EDWARD
S. REDINGTON, as Trustee of Weis
Securities, Inc.,

Appellee.
----- x



73 Civ 2332

BEFORE: HON. INZER B. WYATT, D. J.

September 5, 1975
4 P. M. - Room 705

APPEARANCES:

GRANDEFELD & GOODMAN, ESQ.,
Attorneys for Everhart, Simon, Fox and Vallides
BY: RONALD BRESCIA, ESQ.,

JOSEPH C. GARNI, ESQ.,
Attorney for Trustee-Appellee

MICHAEL E. DON, ESQ.,
Attorney for SIPC

MILBANK, TWEED, HADLEY & McCLOY, ESQS.,
Attorneys for Stock Clearing Corporation
BY: JOHN J. JEROME, ESQ.,
THOMAS A. WILLIAMS, ESQ.,

GEORGE A. DAVIDSON, ESQ.,
Attorney for Edward S. Redington.

Extract of Transcript of Record of Proceedings

[27]

1 jgcg

2 delivering them out to other members is what is called the
3 netting system. In the netting system that one and a half
4 to \$2 billion a day is reduced by the end of the day to
5 \$100 to \$200 million. Those are the cash balances, the net
6 balances of the day, that are required under Rule 7 to be
7 paid each and every day.

8 Your Honor, we say that under Rule 7, under the
9 agreement between Weis and Stock Clearing pursuant to which
10 Weis became a member of Stock Clearing and under the by laws,
11 all of which are incorporated into this agreement, there was
12 a contractual commitment on the part of Weis, a contractual
13 commitment, to pay at 3 o'clock cash for the securities.

14 THE COURT: I first have to decide that you have
15 standing.

16 MR. JEROME: That is correct, your Honor.

17 THE COURT: Before I get to this point.

18 MR. JEROME: We believe that the issue of standing
19 is, in point of fact, subsumed in the central issue of this
20 case.

21 THE COURT: I thought you said that Judge Babitt
22 never got to your argument on the standing.

23 MR. JEROME: That is correct.

24 THE COURT: If I decided you have standing do I
25 send it back to Referee Babitt or do I then go ahead and

Extract of Transcript of Record of Proceedings

28

1 jgcg

2 decide the merits?

3 MR. JEROME: We think at this point in time I
4 would be perfectly willing to have the court make the
5 decision.

6 THE COURT: But what is appropriate?

7 MR. JEROME: I think it would be appropriate
8 that because we are up in a stipulation of facts, as I indi-
9 cated in my brief, that the entire issue be decided.
10 I can't stress too strongly the magnitude and the importance
11 of this issue to the securities industry.

12 THE COURT: I understand. Let me hear the trustee.

13 MR. DAVIDSON: Mr. Jerome's partner sitting at
14 the end of the table will simply change the rules if this
15 court goes against Stock Clearing Corporation and the problem
16 will never come up again. This case is not about anybody
17 owing any money. There is no dispute about that. The
18 question is whether a reclamation applies. To establish a
19 right to reclamation you must come to the bankruptcy court
20 and establish that the trustee has something in his possession
21 that you own.

22 THE COURT: Wait. If you are right, you say the
23 Stock Clearing Corporation has a claim as a general creditor
24 of Weis, is that the argument?

25 MR. DAVIDSON: Yes, sir.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
In the Matter
of

WEIS SECURITIES, INC.,
Debtor.

73 Civ. 2332

----- x
STOCK CLEARING CORPORATION,

Plaintiff-Appellant,

-against-

WEIS SECURITIES, INC. and HERMAN S.
REDINGTON, as Trustee of Weis Securities,
Inc.,

Defendants Appellees.
----- x

WYATT, District Judge,

This is an appeal by Stock Clearing Corporation (SCC) from an order of Bankruptcy Judge Sabitt filed and entered on June 13, 1973.

On May 30, 1973, appellee Redington was appointed trustee of Weis Securities, Inc. (Weis) under Section 5(b)(2) of the Securities Investor Protection Act (15 U.S.C. § 78eee(b)(2); SIPC). The application for a trustee had been commenced in this Court on May 24, 1973 at 12:42 p.m. by Securities Investors Protection Corporation (SIPC) acting under 15 U.S.C. § 78eee(e)(2).

Weis had been a broker-dealer and a member of the

Opinion of Wyatt, J.

New York Stock Exchange (NYSE). SCC is a subsidiary of NYSE and provides facilities for clearing transactions in securities among its members.

On May 24, 1973, Weis cleared its securities with SCC. Weis delivered securities valued at \$762,928.59 to SCC and received from SCC securities valued at \$1,909,093.66. This left Weis owing to SCC \$1,126,165.07. Weis for these clearing securities also owed SCC two other items, one of \$1,786.42 (for New York stock transfer taxes) and the other of \$7,308.32 (as a clearance cash adjustment). The total due from Weis to SCC on the clearing securities of May 24 was thus \$1,135,459.87. Weis gave on May 24 an uncertified check to SCC for this amount, which check was dishonored the next day and has never been paid. According to SCC Rule 7 any check for a debit balance of over \$5000 "shall be certified" but SCC took the uncertified check of Weis.

SCC then asked for an order of the Bankruptcy Judge restraining the trustee from disposing of the securities received by Weis from SCC on May 24, 1973. The parties entered into a stipulation, however, by which the trustee established an escrow fund of \$1,135,459.87 to stand in place of the securities received by Weis from SCC. After this stipulation, the trustee was then free to sell the securities received on May 24, 1973 by Weis from SCC.

SCC on May 20, 1974 commenced a proceeding before the Bankruptcy Judge to recover what it claimed was its property.

Opinion of Wyatt, J.

namely, the escrow fund of \$1,135,439.97. Such a proceeding is one of the "adversary proceedings" governed by Part VII of the Bankruptcy Rules, 701 and following. A complaint and answer were filed.

The complaint had two counts but the second count (in fraud) was later withdrawn with prejudice.

The matter was heard on a stipulation of facts by bankruptcy Judge Sabitt, who then entered an order, with opinion, on June 13, 1975, dismissing the complaint. His reasoning was that SCC could show no ownership of the stock and thus could not reclaim the stock under bankruptcy principles. This appeal is from that order of dismissal.

1.

SCC performs a clearing service for its members. This service has convenient advantages, principally (1) a broker can deliver and receive securities to and from one central point instead of to and from the separate offices of each of the other brokers with whom he has had transactions, and (2) by settling with one central agency for each day's net balance, debit or credit, a broker avoids separate financial settlements for each separate transaction.

1a.

Deliveries of securities between NYSE members through SCC are handled by its "Central Delivery Department" and are governed by SCC Rule 6.

Sealed envelopes containing securities and addressed

Opinion of Wyatt, J.

to a member are delivered to SCC by a clearing member, a separate envelope for each addressee member. A delivery of envelopes by a member is accompanied by a "credit list" in duplicate. The credit list must show each envelope delivered and the "money value" of the items in each envelope. Deliveries are made by members to complete sales contracts made by them on the floor of the NYSE, contracts by which they sell securities to other members. Rules of the Exchange specify the time period within which delivery must be made by the seller and the purchase price must be paid by the buyer. The last day of such period is usually called the "settlement date".

SCC will receive envelope deliveries at its one office during many hours of the day and deliveries may be made up to 3 p.m. for the next day as the settlement date. On the settlement date, all deliveries for that date must be made by 11:30 a.m. Apparently clearing members make several separate deliveries of groups of envelopes - as they are prepared by the clerks of the delivering members - but the last delivery for any settlement date must be before 11:30 a.m.

SCC does not open the sealed envelopes which are delivered to it but if they are properly listed on the credit list, SCC will stamp a duplicate credit list and give it to the delivering member. When the credit list has been so stamped, the envelopes are deemed "to have been accepted" by SCC and thereafter each envelope so accepted "shall be deemed for all purposes to have been delivered to the receiving" member (SCC

Opinion of Wyatt, J.

Rule 6(1)(5)). Before the credit list is stamped, the envelopes are held by SCC for the delivering member; after the credit list is stamped, the envelopes are held by SCC "for the receiving Clearing Members" (Rule 6(1)(5)).

After the credit lists are stamped, SCC sorts the envelopes and (either by placing them in designated boxes or otherwise) makes them available to the members to whom they are addressed, the "receiving" members. It is specifically provided that delivery of the envelopes to the receiving member is subject to the "right" of SCC "to hold property as security for the obligations of Clearing Members . . .". (Rule 6(1)(5))

Apparently SCC opens for business at 9 a.m. and members are required to send representatives "at frequent intervals" between 9 and 11:30 a.m. and at 11:30 a.m. "to receive envelopes" delivered through SCC.

If a receiving member after taking delivery of an envelope finds that there is "any irregularity in an item", such receiving member may return such item to SCC in an envelope addressed to the delivering member. The envelope with a returned item and the accompanying credit list must be stamped "Reclamation" and must be returned to SCC by 2 p.m. "on the day received" (Rule 6(1)(9)).

Thus, SCC through its "Central Delivery Department" permits receiving members to take away from SCC without payment the envelopes (with securities) addressed to them and delivered

Opinion of Wyatt, J.

to them through SCC. They can take away such envelopes without payment at any time between 8 and 11:30 a.m.

1b.

Settlement with SCC for securities received is handled by its "Settlement Department" and is governed by SCC Rule 7.

SCC "shall debit or credit itself, and Settling Members with the amounts payable and receivable".

If "at the close of any business day" a balance is due to SCC from a member, a check must be delivered to the Settlement Department before 3 p.m. When the close of the business day is, does not appear but presumably is before 3 p.m. and probably is 2 p.m., the "final reclamation time". The check in payment to SCC for the balance due must be certified if the amount is more than \$5000 "unless certification is waived [by SCC] in its discretion" (Rule 7).

If a balance is due to a member at the close of the business day, a check of SCC will be made available to the member not later than 3 p.m.

1c.

It seems evident from the description of the clearing process that SCC was not engaging in cash transactions with its members but was extending credit to them until 3 p.m.

SCC was not dealing with strangers, with members of the general public. It was dealing with members of NYSE whose financial condition was being monitored by that institution.

Opinion of Wyatt, J.

Clearing members were permitted to take away securities at any time of the day between 8 and 11:30 a.m., without regard to their debit balances. No restrictions were placed on the use to be made of securities taken away, on which a debit balance was owed. The receiving member could deliver such securities to its own customers, or pledge them with a bank, or sell them for cash. Any debit balance would not be due until 3 p.m. Indeed, it would only be at some time after 2 p.m. that it would be known whether the balance of a member for settlement would be a debit or a credit.

2.

The clearing transactions on May 24, 1973, between SCC and Weis were on credit to Weis for any debit balance which might result. They were not cash transactions, such as in *Re Fidelity*, 256 F.753 (2d Cir. 1919) on which appellant relies. They were advances of credit, more like to the facts of the bank loan in *National City Bank v. Hotchkiss*, 231 U.S. 50 (1913).

3.

The Bankruptcy Judge ruled that SCC never acquired any title to the property cleared through it and therefore had no standing to claim against the escrow fund, standing in place of the securities delivered through SCC to Weis. This ruling seems sound but even if SCC had a title, it parted with such title on the credit of Weis; it thus has no reclamation claim.

Opinion of Wyatt, J.

The order of Bankruptcy Judge Sabitt entered on
June 13, 1975, is affirmed.

SO ORDERED.

Dated New York, New York
October 26, 1975

INZER B. WYATT
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- - - - -x

In the Matter of :
WEIS SECURITIES, INC., :
Debtor. :
----- :
STOCK CLEARING CORPORATION, :
Plaintiff-Appellant :
- against - :
WEIS SECURITIES, INC. and EDWARD S. :
REDINGTON, as Trustee of Weis :
Securities, Inc., :
Defendants-Appellees. :

- - - - -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LOUIS WOLF, being duly sworn, deposes and says:

I am over the the age of 18 years and am not a party
to this action.

On March 3, 1976, I served the within joint appendix,
by mailing one copy, on Securities Investor Protection Corpo-
ration, by depositing a true copy thereof, in a securely enclosed
post-paid envelope, addressed to said corporation at

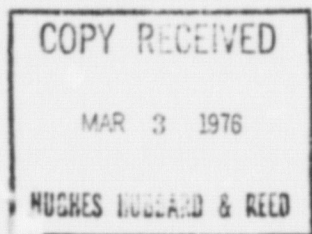
900 Seventeenth Street, N.W., Suite 800, Washington, D.C. 20006
in a mailbox maintained by the Government of the United States
at 1 Chase Manhattan Plaza, New York, N.Y.

Louis A. Schif

Sworn to before me this
3rd day of March, 1976.

Clifford Neil Ribner

CLIFFORD NEIL RIBNER
NOTARY PUBLIC, State of New York
No. 31-4609401
Qualified in New York County
Commission Expires March 30, 1977



Egt